

# ISSUES OF CONCERN IN THE WOMEN'S MOVEMENT IN INDIA (1970-90)



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## **PREFACE**

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## INTRODUCTION

In India colonial rule and the freedom struggle marked the beginnings of an awakening among women. Different streams within the anti-imperialist anti-feudal struggle posited different, even contentious images of identities for women. But the nationalist consensus symbolized in the Fundamental Rights Resolution of the Indian National Congress, 1931, postulated freedom, justice, dignity and equality for women as essential for nation building. 'Equality between the sexes' was guaranteed by the constitution of Independent India, and there was a comparative lull in feminist activities until the nineteen seventies when the constitutional promise of equality was denounced as a sham.

The resurgence of the women's movement in contemporary India was a response to the declaration of national emergency. Both men and women, political activists and citizens had suffered under a state unencumbered by civil laws and institutions. The women's movement was one of the many burgeoning efforts at reassertion of citizens claims to participate as equals in the political and development process.

There were two broad developments that went towards creating what feminist academics have variously termed, 'the contemporary women's movement' or the 'new women's movement'. The first was the formal process set in motion in 1967, when the UN General Assembly

adopted the Declaration on the Elimination of Discrimination against women.<sup>1</sup> Article 2 declared,

'All appropriate measures shall be taken to abolish existing laws, customs, regulations and practices which are discriminatory against women, and to establish adequate legal protection for equal rights of men and women, in particular:

- (a) The principle of equality of rights shall be embodied in the constitution or otherwise guaranteed by law;
- (b) The international instruments of the United Nations and the specialized agencies relating to the elimination of discrimination against women shall be ratified or acceded to and fully implemented as soon as practicable.<sup>2</sup>

This Declaration led in turn to 1975 being named the International Women's Year, and the Years between 1975 and 1985 being declared the Women's Decade.

In India, the committee on the status of women was constituted by the Union government as part of its obligations as a signatory to the 1967 Declaration on the Elimination of Discrimination Against Women.

Dr. Phulrenu Guha, Union Minister for Social Welfare, chaired this committee with Dr. Vina Mazumdar, appointed in 1972, as Member-

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<sup>1</sup> General Assembly resolution adopting the Declaration on the Elimination of Discrimination against women A/RES/2263(XXII), 7 November 1967 in The United Nations and the Advancement of Women 1945-1996. Deptt. of Public Information United Nations, New York, p. 175.

<sup>2</sup> Ibid.

Secretary. In order to write this report, the committee commissioned a number of studies and interviewed about 500 women from each state. These studies and the report "Towards Equality" issued in 1974 were the first major effort to understand the extent to which constitutional guarantees of equality and justice had not been met for women. Authors of this report charged that women's status had not improved but had, in fact, declined since independence:

The review of the disabilities and constraints on women, which stem from socio-cultural institutions, indicates that the majority of women are still very far from enjoying the rights and opportunities guaranteed to them by the constitution ..... The social laws, that sought to mitigate the problems of women in their family life, have remained unknown to a large mass of women in this country, who are as ignorant of their legal rights today as they were before independence.<sup>3</sup>

Thus legal reform, education and political rights – the three instruments designed by free India to realise women's right to equality – had failed to benefit the large masses of women affected by problems of poverty, powerlessness, over-work and illiteracy.

Identifying a link between the demographic trends of declining sex ratio (number of women per thousand men in the population), lower life expectancy, higher infant and maternal mortality with declining work participation and illiteracy among women from the poorer sections of

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<sup>3</sup> Towards Equality, Report of the Committee on the Status of women in India, Government of India, Ministry of Education and Social Welfare, 1974.

society, the Report stressed that the dynamics of social change and development had adversely affected a large section of women, particularly among the poor, and had created new imbalances and disparities.

Towards equality was the wake-up call the heat and energy generated by Towards Equality and the emerging research data, provided the intellectual foundation for a new women's movement.

The contemporary feminist movement emerged in the late 1970s and early 1980s. Feminists, galvanized by endemic violence against women organized themselves. Replacing the all-India Women's Organizations were a large number of autonomous groups, which have taken up women's issues from a totally new perspective. These autonomous groups and organizations were run by women and for women, and not by political parties. These organizations displayed an increased concern and protested against the rising incidence of crimes of violence against women.

A significant feature of the new women's movement is the emergence of new militant and articulate organisations of poor women which see development activities not as end in themselves but as means to improve women's overall status in the family, the neighbourhood and the political system.

The use of development activities to empower women to fight for their rights has also helped to inspire other women's and people's organisations which began to work at grass-root levels. There was a new

trend among these groups – a shift from doing things for needy women to doing things ‘with’ them i.e. a move from the charitable to the participatory approach. The new organisations attached a lot of importance to the ideology of participatory development, and of women’s rights to equality, dignity and social justice.

The contemporary feminist movement, beginning in the late 1970s and still alive today, has brought women’s issues to the attention of all Indians. This thesis has been divided into five chapters and a conclusion. The first chapter, The contemporary women’s movement 1970-1990 deals with the History of the women’s Movement in India. A broad overview of the concerns for women’s issues during the nineteenth century is discussed. This is because, this century was a period in which rights and wrongs of women became major issues. The Indian women’s movement has from the start been an amorphous, multiclass sporadic, issue oriented and autonomous movement with several streams of ideological thought and varying strategies, therefore the structure of the contemporary women’s movement has been examined. Some of the significant grass-roots movements of women in the decades of the seventies and eighties have been studied. A movement of landless women in Maharashtra which was mainly a tribal movement was unique for having mobilised thousand of women to protest against alcohol vending and consumption as well as wife-beating. The attempts to empower self-employed poor women made by the Self-Employed Women’s Association (SEWA) have been discussed. Yet another

movement which made fascinating study was the Anti-Price Rise Campaign in Bombay. "Women storming into the streets, women marching not in hundreds or thousand but in tens of thousands, beating their steel or brass plates with heavy spoons to raise a thunderous din, women barricading the cars of politicians, women confronting the Minister of Food Supplies in his own kitchen to find out if the family eats the ration food they have to eat".<sup>4</sup>

Having looked at three grass roots movement of women from the western region of India this study focuses on the Chipko Movement in the heart land of India, Uttar Pradesh. The Chipko Movement added a new dimension to the perception of what constitutes "women's issues". The way in which economic development is to transpire so as to best fill human needs, and the importance of environmental conservation were introduced as issues of central concern to women. This movement also heightened women's participation in public forums and their awareness of their own potentialities. Both in its expression of the empowerment of women and in the public issues it proclaimed as of concern to women, the Chipko movement was an important inspiration to the empowering of women in the movement.

Chapter Two of this thesis deals with the first issue of concern in the women's movement – violence. The campaigns against violence launched by the women's movement were the most articulate expression

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<sup>4</sup> Omvedt Gail, *We Will Smash This Prison. Indian women in Struggle*, Orient Longman, New Delhi, 1979, p. 77.

of women's protest. Agitational activity has taken a number of forms and has been prolific. This chapter begins with the anti-dowry campaign that was crucial in placing gender issues within the wider political discourse, both in terms of the path that the movement charted, and in terms of the response from main stream political structures. The other major campaigns studied are ones against rape, sexual harassment, sati and indecent representation of women in the media. The campaigns were nation wide in terms of geography, and in terms of the spectrum of women and other organizations which were individually or jointly, galvanized into participation - their reach extended from the metropolitan cities to qasbas and villages. To some extent these campaigns encapsulate the major political trends of the period.

It was in focusing on the state in terms of law, administration and government responsibility that women's organisations and groups came together in a collective effort where joint struggle, which many groups saw as essential to the advancement of the women's movement seemed possible.

The third chapter is devoted to the issue of legal reform which was one of the major concerns of the women's movement in the two decades of this study. This period witnessed intense and widespread movements by women's organizations and groups to bring about law reform to deal with atrocities and violence against women. The campaign by women's organizations and those supporting them focused mainly on reform in the laws relating to dowry and rape. Women's organizations during the late

1970s and early 1980s demanded from the state that sweeping amendments be introduced in these laws to check the rising tide of crimes against women. This chapter focuses on the reforms which were brought about especially in the dowry and rape laws in the early and mid 1980s and examines whether these laws were adequate. The thesis attempts to examine some of the major reasons why these laws have not proved to be successful in stemming the rising tide of violence and crime against women.

Chapter four focusses on the women's movement concern for the Right to Health. women's health in India has been in an appalling condition and this is reflected in the demographic trends like an adverse and declining sex ratio and a higher mortality rate and lower life expectancy of women. The women's movement's campaigns against harmful injectable hormones for Family Planning have been examined. The campaign against injectable contraceptives Net En and Depo Provera have been analysed. The women's groups through their protest campaigns tried to save the female foetus. The issue of amniocentesis and sex selection was essentially the initiative of women's group. The issue of Amniocentesis represents the most blatant and yet the most refined (and hence invisible) atrocities committed over women by the entire range of Sex Determination (S.D.) and Sex-Pre-Selection (S.P.) technologies.

The Forum Against Sex Determination and Sex Preselection called for a ban on all technologies which could be used for sex preselection. This chapter deals not only with the three major campaign against high



dose E.P. drugs, Net-en and Amniocentesis tests but also deals with other small and relevant protests against the manipulation and coercion of people under the family planning programme. The health campaigns of the contemporary women's movement have without doubt determined the agendas of the Indian state. It is because of the efforts of women activists that the state has moved away from the strident population control agenda of the 1960s and 1970s to the more expansive notions of reproductive health and reproductive rights. What has this change meant to women? These issues besides, other ones like 'Reproductive Rights' and 'Reproductive freedom' have also been analysed in this chapter.

The fifth chapter deals with the women's movement efforts towards a Uniform Civil Code. Even though the Uniform Civil Code had figured as a demand of the pre-Independence Women's Movement, the Constitution-makers placed it among the 'Directive Principles' because of the widespread opposition to it, particularly from the minorities. The many cases brought to women's organizations relating to divorce, maintenance, guardianship, adoption and property – all governed by various personal laws – emphasized the need for a Uniform Civil Code (UCC) and brought to the surface demands for its adoption.

The issue of personal law became especially controversial for the women's movement in 1985 with the Shah Bano case. The Shah Bano controversy is easily the most historic event in post-independence India, not only for Muslim women but for all Indian women. The Shah Bano case wherein Shah Bano a seventy five year divorced Muslim women had

demanding maintenance from her husband under Section 125 of the Criminal Procedure Code. The Supreme Court judgement in favour of Shah Bano, the reaction of the Muslim conservatives and finally the government's decision to introduce a bill that would undo the impact of the Supreme Court verdict in the Shah Bano case by negating the applicability of section 125 to Muslim. These are the issues discussed in this Chapter.

The campaign against the Muslim women's (Protection of Rights on Divorce) Act 1986 was one of the major campaigns of the women's movement which has been examined in this chapter. The issue of communalism which is the newest and perhaps most difficult challenge to the women's movement has been discussed. This issue becomes important if we consider the attempt being made by fundamentalist forces to mobilise women along religious lines in order to put them on opposite sides even though all shades of fundamentalism share a common hostility to gender equality. This chapter deals with the challenges that confront women activists in view of the growing fundamentalism and attempts at mobilizing women by these forces.

The sixth and the last chapter of this thesis is the conclusion.

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# **CHAPTER 1**

## **THE CONTEMPORARY WOMEN'S MOVEMENT : EMERGENCE AND PROLIFERATION OF AUTOMOUS GROUPS IN INDIA 1970-1990**

## THE CONTEMPORARY WOMEN'S MOVEMENT

### Emergence and Proliferation of Autonomous Groups in India: 1970-1990

#### **The Backdrop :**

In India, the earliest efforts to enhance the status of women were made in the nineteenth century. Raja Ram Mohan Roy's (1772-1833) name is usually listed first among those of the nineteenth century reformers concerned with improving women's status. Historians have called him the "father of Modern India", "a Champion of Women's rights" and a "feminist".<sup>1</sup>

From the time of Rammohan Roy's protest against widow immolation until the end of the nineteenth century, there were a number of agitators and reformers who spoke on behalf of women.

Across India, there is a long list of reformers who undertook major efforts on women's behalf. In Bengal, Ishwar Chandra Vidyasagar, Keshub Chandra Sen, and Swami Vivekanand. In North India, Swami Dayanand Saraswati, the founder of the Arya Samaj. Among Muslims, Khwaja Altaf Husain Hali and Shaikh Muhammad Abdullah, in Western India Mahadev Govind Ramade, Dhondo Keshav Karve, Jyotiba Phule. In South India, R. Venkata Ratnam Naidu, and Virsalingam Pantulu. Reformers were found among all communities.

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<sup>1</sup> FORBES GERALDINE, *Women in Modern India*, The New Cambridge History of India, Cambridge University Press, 1996, p. 10.

The central issues they raised were education, widow remarriage, abolition of purdah and agitation against child marriage.<sup>2</sup>

These movements because they were dominated and run by men, were fundamentally different from the women's movement of today especially the movement of the late seventies and eighties. A significant and noteworthy difference was that the nineteenth century movement did not attack the prevalent patriarchal system in any way. Rather, the attempt was to improve the condition of women within the framework of patriarchy. The term patriarchy is used to mean not only the system of familial organization in which the father as head is vested with primary rights, but also to mean all the extant economic, social, political and cultural systems which 'naturally' grant the first place to men rather than to women. Nineteenth century reformers wished to give some importance to women without at any time challenging the position or power enjoyed by men within a male dominated society.<sup>3</sup>

These reformers viewed women as their subjects - to be changed as a consequence of persuasive arguments, social action, education and legislation. Sumit Sarkar, an eminent historian has argued that these reformers were concerned primarily with modifying relationships within their own families and sought only "limited and controlled emancipation of

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<sup>2</sup> Heimsath H. Charles Indian Nationalism and Hindu Social Reform Princeton University Press, 1964.

<sup>3</sup> Talwar Bharat Vir, Feminist consciousness in women's journal in Hindi, 1910-20. In Kumkum Sangari Sudesh Vaid Ed., Recasting Women Essays in Colonial History. Kali for Women, N. Delhi, 1993, p. 205.

their women folk.<sup>4</sup> Women themselves were not partners in the schemes created for their regeneration. Soon, the best-educated and influential men were involved with nationalist politics and the "Woman question" was no longer a subject on which educated Indians and British rulers could agree.<sup>5</sup> But these issues were not discarded as the "new women" moved forward to set up their own organizations and reorganize social reform priorities.

The changes these male reformers proposed could not resolve the "Women question". They had little understanding of women's lives beyond those of women in their own families. Moreover, many of them doubted the efficacy of legal measures even as these changes were enacted, Janaki Nair comments on the "limited operation of the 'modernization' paradigm". She writes, "The Agenda of 'modernization' to which both colonialist and nationalist discourse laid claim, did not, indeed could not, include the wider transformation of Indian society".<sup>6</sup> Nevertheless, the steps taken by these respectable and well-educated Indian men linked improving women's status with the modernization agenda. Their campaigns set in motion further attempts to establish institutions that would be supportive of a new generation of women leaders.<sup>7</sup>

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<sup>4</sup> Sarkar Sumit, "The 'Women's Question' in the Nineteenth Century Bengal", *Women and Culture*, ed. Kumkum Sangari and Sudesh Vaid, Bombay Research Centre for Womens Studies, 1994, p. 106.

<sup>5</sup> Chatterjee Partha, *The Nationalist Resolution of the Women's Question*, in Kumkum Sangari Sudha Vaish. *Recasting Women*, op. cit., pp. 233-53

<sup>6</sup> Nair Janaki, "Reconstructing and Reinterpreting the History of Women in India", *Journal of Women's History*, 3, No. 1, p. 132, cited in Geraldine Forbes, op. cit., p.31.

<sup>7</sup> Ibid.

It is only after women found their own associations that they were able to propose solutions and take action. Women's associations sprang up all over India in the late nineteenth and early twentieth centuries. These associations shared the goal of bringing women together to discuss women's issues.

Between 1917-27 three major national women's organizations were created. These were – the Women's Indian Association (WIA), the National Council of Women in India (NCWI), and the All-India Women's Conference (AIWC).

Indian women began using the organs of the nationalist social reform movement such as the Indian Social Reformer and the Indian Review to argue their case for gender equality. There were several regional language journals – Grihalakshmi, Stree Darpan and Chand published from Allahabad, Mahila Sarvasv from Aligarh, and Sadacharini from Calcutta. These journals were important for the women's movement because of their examination of issues related to women.<sup>8</sup>

The politicisation of women under the auspices of the nationalist movement was by no means restricted only to those who were beginning to experience the travails of the public world of work. What is perhaps most unique about the Indian case was the mobilization of entire families in the struggle for independence, including women who led very traditional and conservative lives. The mobilisation was in large part enabled by

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<sup>8</sup> Talwar Bharat Vir, *op. cit.*, pp. 205-206.

recasting the role of the middle class women. They could play an active role in national politics without any loss of femininity due to a redefinition of the political space as an extension of the family.<sup>9</sup>

The Indian National Movement especially in its Gandhian phase, elaborated a public sphere of female involvement which was applauded rather than criticised. This produced a "politics of respectability" which, as Tanika Sarkar has said, was "a symbiosis between the religious and the political in the nationalist message under Gandhi's leadership which enabled nationalism to transcend the realm of politics and elevate itself to the religious domain."<sup>10</sup>

So closely was the national movement allied with the emerging women's movement that the politicisation of women was often considered a natural aspect of national liberation.<sup>11</sup>

In post Independent India 'Equality between the Sexes' was guaranteed by the constitution and there was a comparative lull in feminist activities. The veteran woman leader, Kamaladevi expresses her concern at the decline in the women's movement thus, "The vast concourse of women who had poured into the freedom area, had slipped back into their old grooves ... The women leaders too had got settled in, though in new social grooves of power and position that independence had thrown up.

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<sup>9</sup> Nair Janaki, op. cit., p. 125.

<sup>10</sup> Tanika Sarkar, "Politics and Women in Bengal: The Conditions and Meaning of Participation" in *Women in Colonial India*, pp. 231-41 also Geraldine Forbes, "The Politics of Respectability: Indian Women and the Indian National Congress" in *The Indian National Congress: Centenary Hindsight* ed. D.A. Low, Oxford University Press, Delhi, 1988, pp. 54-97.

<sup>11</sup> Nair Janaki, op. cit., p. 127.



They forged no links with the wide mass of women who are only approached briefly at voting time to secure their ballot papers.<sup>12</sup>

However, around the mid-seventies, India witnessed the emergence of women's groups and organisations which have taken up issues from a totally new perspective. Their activities were not restricted to merely passing resolutions or sending delegations to various authorities. These groups engaged not only in militant activism to assert women's rights but also made serious attempts to articulate their thoughts on the roots of oppression of women.<sup>13</sup>

#### **THE STRUCTURE OF THE CONTEMPORARY WOMEN'S MOVEMENT:**

The structure of the women's movement is highly decentralized. The movement is composed of unaccountable organizations in both cities and rural areas; it claims participants who are wealthy who are middle class, who are poor, who are communist, socialist, or resolutely non-ideological; who are members of parties or who hold political parties in contempt as elitist, opportunist or corrupt.<sup>14</sup>

#### **WOMEN ORGANIZATIONS WITH LINKS IN POLITICAL PARTIES :**

Although much of the women's movement is composed of "autonomous" groups with no formal tie to any other organization or party,

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<sup>12</sup> Cited in Desai Neera, Maithreyi Krishnaraj, *Women and Society in India*, Ajanta Publications, 1987, p. 340.

<sup>13</sup> Patel Vibhuti *Emergence and Proliferation of Autonomous Women's Groups in India: 1974-1984* in Ghadially Rehana *Women in Indian Society*, Sage Publication, 1988, p. 249.

<sup>14</sup> Calman J. Leslie, *Toward Empowerment Women and Movement Politics in India*, Westview Press Inc., 1992, pp. 11-12.

the largest national opposition political parties have women's organizations affiliated with them. These must be counted as important components of the women's movement. Resources provided by political parties made the emergence of these groups possible.

The national level women's organizations which are affiliated to political parties are the National Federation of Indian women (which has ties to the CPI); the All India Democratic Women's Association (affiliated with the CPM); the All India Coordination Committee of Working Women (which is the women's wing of CITU, Centre of Indian Trade Unions, also of the CPM); and Mahila Dakshata Samiti, an independent organization with close ties to the Janata Party.

NFIW, formed in 1954, is the oldest of these, a number of its founders had been members of the All India Women's Conference, the largest women's organization in the struggle for independence. At that time, AIWC included members with widely diverse ideological predispositions. After independence, as AIWC retained close ties with the Congress government communist women broke with the organization, which they accused of being "pro-establishment" and "elitist".<sup>15</sup>

While not officially a part of the Communist Party of India, NFIW closely toes the CPI ideological and tactical line. For example, NFIW

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<sup>15</sup> Gandhi Manju, "National Federation of Indian Women (NFIW): Work and Issues Taken up During the Decade". Paper presented at the National Seminar on a Decade of Women's Movement in India, CWDS, N. Delhi.

withdrew its support for the Anti-Price-Rise Movement<sup>16</sup> of the early 1970s and backed Indira Gandhi's declaration of emergency when the CPI did.<sup>17</sup> Thus, technically an independent organization, it is with good reason that other activists regard NFIW as the women's arm of the CPI.

NFIW is a hierarchically structured organization whose stated goal is to struggle on behalf of poor and working class women. The means of doing so have been two fold. On the one hand are fairly traditional social service projects organized by middle class women and delivered as services to poor women. These have included literacy classes, sewing classes, and some development of employment-generating projects.

The other means of struggle is "agitation" to influence government decision making. The General Secretary of NFIW speaks of the organization as a "pressure group" that "pushes" government and makes "demands", "we think you have to go to the streets".<sup>18</sup>

NFIW was already functioning when the women's movement had its awakening in the late 1970s; since then, it has joined with other organizations in broad coalitions around a number of issues specific to women, including anti-rape and anti-dowry activities. NFIW states categorically, however, that it is "not a feminist organization", by which it means that it rejects "the idea that

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<sup>16</sup> Anti-Price-Rise Movement Originated in Bombay to protest economic problems with particular resonance for women: scarcities and sharply rising prices of consumer goods, including food and clothing.

<sup>17</sup> Everett Jana, "Approaches to the 'Women Question' in India: From Maternalism to Mobilization", *Women's Studies International Quarterly*, 4 : 2 (1981), p. 171.

<sup>18</sup> Farooqui Vimla in an interview to Leslie J. Calman, cited in Leslie J. Calman, op. cit., p. 75.

women's struggle is against men".<sup>19</sup> The group argues instead that women's rights are wholly dependent on socialism. In keeping with CPI ideology, it expects a social transformation to take place through parliamentary politics. Thus, its mobilization of poor women is an attempt not only to pass specific laws but to build an electoral force.

The two organizations affiliated with the CPM resulted from the raised consciousness about women that was sparked by the emerging women's movement. Calls for the organizing of women were heard at the founding convention of CITU in 1970; but not until the late 1970s did pressure by women within CITU and the CPM finally bring the All India Coordination committee of Working Women (AICWW) and the All India Democratic Women's Association (AIDWA) into being.<sup>20</sup>

AIDWA is a membership organization<sup>21</sup> whose local affiliates organize around a range of problems at the local level including dowry and violence against women, price rises, and working women's grievances.<sup>22</sup> The founding of these women's organizations has prompted an expanded role for women in the main channels of the CPM, with the number of women in high levels of the CPM increasing.<sup>23</sup>

<sup>19</sup> Ibid.

<sup>20</sup> Interview with Vimal Ranadive, Secretary, AICWW and Vice President AIDWA, New Delhi, 18 June 1986, cited in Leslie J. Calman, *op. cit.*, p. 76.

<sup>21</sup> The largest number of members is in Kerala and West Bengal where the CPM has been very strong.

<sup>22</sup> A coordinated campaign was conducted in N. Delhi to protest poor conditions in the resettlement communities that were created by the government on the outskirts of N. Delhi when Rajiv Gandhi tore down slum areas in the centre of the town. Interview, officers of the Delhi Janvadi Mahila Samiti, N. Delhi, June 1988.

<sup>23</sup> Interview with vice President AIDWA, New Delhi, cited in Leslie J. Calman, *op. cit.*

AIDWA conducts free legal clinics providing advice about dowry and family violence, anti-dowry demonstrations, including some held outside homes where brides have been killed or allegedly committed suicide; public rallies to influence government policies regarding maintenance for divorced Muslim women; and public denunciations of the police handling of cases of violence against women are all part of AIDWA's repertoire.<sup>24</sup>

The roots of the Mahila Dakshata Samiti (Women's Vigilance Committee) are in the Anti-Price-Rise Movement in the early 1970s; it enjoys a close relationship to the Janata Party, as an organization in sympathy with the Janata Party, Mahila Dakshata Samiti is comfortable with parliamentary politics.

The MDS has concentrated its educational and agitational efforts into three organizational wings: consumer protection; action against dowry and working for the protection of women's rights. In the area of consumer protection and dowry, MDS has sponsored a number of symposia that have attracted important political leaders, jurists, scholars and journalists. In 1977-78, MDS initiated the first study of dowry deaths; its 1978 report, widely publicized by the press, revealed that many of the deaths routinely recorded by the police and reported in the press as suicides were, in fact, murders. Subsequent to this, the press began more and more to discuss the phenomenon that has become known as "dowry death".<sup>25</sup> It was MDS

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<sup>24</sup> "Delhi Janwadi Mahila Holds its First State Conference", *The Voice of the Working Woman*, July-Aug. 1982, pp. 11-12.

<sup>25</sup> Kishwar Madhu, "Introduction", In *Search of Answers* ed. Kishwar and Ruth Vanita Zed Books, London, 1984, p. 31.

that organized the first demonstration against dowry death, in October 1978, and it initiated the creation of the Dahej Virodhi Chetana Manch, the wide coalition of women's groups opposed to dowry that marched on the Loksabha in August 1982.<sup>26</sup> The organization has also lobbied parliament to create family courts and preserve maintenance for Muslim women upon divorce.

### **Social Service Agencies :**

Two of the oldest women's groups in India, the Young Women's Christian Association and the All India Women's Conference became participants in the new women's movement of the 1970s and 1980s.

The YWCA was founded in England in 1855, twenty years later, India's YWCA was founded by British "Mem Sahibs" who started sewing classes and Bible study groups. Today, the YWCA has 67 centers all over India; while classes and service projects continue, there have been enormous changes since the early 1980s.

With a major shift in philosophy, actions have also changed. The YWCA pushes for improved legislation; the leadership has worked for anti-dowry laws demonstrated against the Muslim women's bill<sup>27</sup>, lobbied successfully for reforms in Christian inheritance laws, and drafted a memorandum to the government opposing the use of amniocentesis for sex determination.<sup>28</sup> The YWCA also works in conjunction with

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<sup>26</sup> Mahila Dakshata Samiti, Biennial Report, 1984-85, p. 6. Also "Two Big Anti-Dowry Demonstration", Manushi No. 12, 1982, p. 47.

<sup>27</sup> For details of this campaign, Chap. on Women and Communalism.

<sup>28</sup> Forbes Geraldine, "From Purdah to Politics: The Social Feminism of the All-India Women's Organization", in *Separate Worlds*, ed. Hanna Papanek and Gail Minault, Chanakya Publications, Delhi, 1982.

autonomous groups to provide counseling and support to battered and abandoned women.

On the scale of respectability, none can match the All India Women's Conference, which seems to have lost something of the feisty spirit it had during the nationalist struggle. Founded in 1927, AIWC fought first for the enfranchisement of women and then for revisions in personal (e.g. family) law.<sup>29</sup> In addition to lobbying for women's rights, AIWC also undertook some social work activities – it set up hostels for working women, "rescue homes" for prostitutes, and encouraged schools for girls – but these were secondary to its role as a lobbying body for the legal and political rights of women.<sup>30</sup>

Typical of the AIWC activities was its participation along with the other large women's organizations – NFIW, AIDWA, AICCWW, the YWCA – some women MPs, in a 1980 meeting held at the AIWC headquarters. These groups demanded a meeting with the Deputy Chairman of the Planning Commission in order to plead for greater attention to women's needs in the Sixth Five Year Plan.<sup>31</sup> The word had been leaked that the proposed plan barely included mention of women, much less a systematic

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<sup>29</sup> Beginning in the 1940s, AIWC fought for the creation of a Uniform Civil Code that would guarantee to all Indian women equal rights in inheritance, marriage and guardianship, consent of both parties for marriage, the prohibition of polygamy and the legitimization of divorce. For a detailed treatment of AIWC during the pre-independence period see Jana Everett, *Women and Social Change in India* (Heritage Publishers, N. Delhi, 1985).

<sup>30</sup> Forbes Geraldine, "From Purdah", op. cit., p. 229.

<sup>31</sup> All India Women's Conference, Annual Report, 1983, N. Delhi, Sixth Five Year Plan: 1980-1985, Government of India, Planning Commission also Vina Mazumdar Note on Women Through The Plans For Discussion on 9th Five Year Plan, 1997, CWDS, N. Delhi.

plan for their uplift. The flavour of the meeting is recalled by one participant, who reports that “the poor man came to the meeting and walked into an angry barrage of elderly women shouting at him, ‘we won’t have it!’<sup>32</sup> They were rewarded with a promise that the draft plan would provide more avenues for employment to women and also try to safeguard women’s rights; in fact, the Sixth Plan did, for the first time, include a chapter on women and development.

Thus, while AIWC has not been in the forefront of activism, it has at times been a participant in the new efforts being made. Its long history and its participation in the Nationalist movement still provide it with a cachet of respectability that can be and has been, put to use, particularly to be heard at the upper levels of government.

### **Leftist Movements :**

Many of the women involved in the contemporary women’s movement were formerly associated with independent radical organizations or with the revolutionary-minded Communist Part of India (Marxist-Leninist). Their break from male-dominated organizations was partly inspired by western feminist ideas<sup>33</sup> as women began to expect greater respect for women and for issues pertaining to women within these organizations. Instead, they found leftist organizations unrelentingly sexist: the sexism was personally directed at them as women activists, and the organizations “were utterly insensitive to the oppression of

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<sup>32</sup> Interview, Vina Mazumdar, Director, CWDS, New Delhi.

<sup>33</sup> Gandhi Nandita, “Women’s Movement in India: Proposing an Alternative Perspective”, Lokayan, N. Delhi, p. 42.



women.<sup>34</sup> A number of women activists also rejected the hierarchical organizational style dominant in the left, preferring instead a more consensual approach to decision making. Many of the women who left these organizations for ones with a greater, if not exclusive, concentration on women, continue to regard themselves as operating within a socialist or Marxist ideological framework, but generally add the word "feminist" to their self-description.<sup>35</sup>

Vimochna, in the city of Bangalore, is an example of an autonomous organization whose members were first exposed to political ideas and actions and who gained organizational skills through association with leftist organizations. Vimochna grew directly out of the Society for Informal Education and Development Studies (SIEDS) founded in 1976.<sup>36</sup>

Vimochana, the women's organization, became formalized in 1979, and began to work first on cases of violence against women. Although members of the group continue to work with individual victims of violence, and to educate poor women about women's issues, much of the work of the group concerns media and cultural politics. In addition to sponsoring an annual women's film festival, the group publishes an occasional journal in English, 'Sangharsh' that is highly theoretical and 'intellectual', a

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<sup>34</sup> Desai Neera and Patel Vibhuti, *Indian Women: Change and Challenge in the International Decade 1975-1985* Popular Prakashan, Bombay 1985, p. 65.

<sup>35</sup> In Bangalore, Vimochana describes itself as "Socialist Feminist". In Hyderabad, Stree Shakti Sangathan is "Marxist-feminist and in Bombay in the late 1970s the Socialist Women's Group put out a newsletter called Feminist Network.

<sup>36</sup> As the organization was founded in the midst of the Emergency (1975) it took a name that sounded "Vague and respectable". "Vimochana: Forum for Women's Rights". Pamphlet, Bangalore.

bimonthly newsletter called "Vimochana Varthapatra", in Kannada, which publishes investigative reports and articles on violence against women; and a bimonthly English language news sheet, "Kriti".<sup>37</sup> Vimochana also contains a street theater group that writes plays about dowry, housing, and other women's problems, and performs them on street corners. In conjunction with the women and media group of Bombay, Vimochana successfully protested an hour-long talk show on the national television network, Doordarshan for perpetuating negative stereotypes of women; the show was withdrawn after a few months.<sup>38</sup> Along with the SIEDS Collective, Vimochana also runs a women's bookstore, streelekha, described as "a woman's place", but explicitly open to publications on peace, development ecology, and on movements of workers, Dalits and peasants.<sup>39</sup> Thus, Vimochana's work on behalf of women is seen as part of a broader agenda of social change to be brought about through movement politics.

Besides Vimochana other women's groups have also had the experience of working in radical political groups. The first of the new wave of women's groups to appear in the 1970s was the Progressive Women's Organization (POW) of Hyderabad. It was founded in 1974 by students at Osmania University who were connected to the CPI (ML); the new group was an independent one, and began with campaign against dowry and sexual harassment.<sup>40</sup> POW's manifesto, however makes plain its authors

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<sup>37</sup> "Vimochana: Forum for Women's Rights", Pamphlet, Bangalore.

<sup>38</sup> The name of the ill-fated show was "Its a woman's world".

<sup>39</sup> "Streelekha: A Woman's Book Place", pamphlet, Bangalore.

<sup>40</sup> Gail Omvedt, "We will Smash This Prison, Indian Women in Struggle, Orient Longman, N. Delhi, 1979.

grounding in Marxist thought: the section that explains why women are oppressed is an unattributed synopsis on Engels' *The Origin of the family, private Property and the State*.<sup>41</sup>

Unlike Marxist organization, however, the manifesto also denounces economic and cultural patterns that specifically oppress women. POW demanded the abolition of prostitution and obscenity (defined as the depiction of women as degrading sex objects), and called for improvements in and implementation of laws regarding inheritance, child marriage, dowry, equal pay and maternity and creche facilities.<sup>42</sup>

#### **AUTONOMOUS ORGANIZATIONS :**

Around the mid-seventies, India witnessed the emergence of women's groups and organizations which have taken up women's issues from a totally new perspective. With the establishment of autonomous women's groups, things started changing. Established women's organizations, and women's fronts of political parties were forced to sit up, and think of revitalizing themselves.<sup>43</sup> These autonomous groups and organizations are run by women and for women, and not by political parties. This does not necessarily mean that members of these organizations are apolitical. However, these organizations are not women's fronts of specific political parties. They do not exclude male membership, though they insist that women should decide the course of the movement.

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<sup>41</sup> Draft Manifesto of the Progressive Organization of Women (POW) in the Appendices No. 1.

<sup>42</sup> Ibid.

<sup>43</sup> Patel Vibhuti, 'Indian Women on Warpath', Lokayan, Dec. 1982, pp. 1-3.

Vibhuti Patel has written at length on the emergence and proliferation of autonomous women's groups in India in the seventies and eighties.<sup>44</sup> Patel has identified three main characteristics of the Autonomous women's movement, first, women organize and lead the movement. Second, these groups fight against oppression exploitation, injustice and discrimination against women. This is given top priority in the movement, no other considerations can subordinate women's rights, Third the autonomous women's movement cannot be subordinated to the decisions and necessities of any political or social group / organization.

In contrast to the parties, the autonomous organizations do not seek state power. Their rhetoric stresses the need to empower the grass-roots and end social hierarchies. New Delhi's 'Saheli' is one of the autonomous organizations that is actively involved in fighting for women's rights and empowerment.

Saheli was founded by women who had participated in agitations against dowry deaths and the Mathura rape case.<sup>45</sup> Saheli counsels battered women and those who fear being murdered by their husbands and in-laws; it offers legal advice to the parents and siblings of burning victims. After several years of sheltering women in the homes of volunteers, it has been able to create a small short stay home for those women who choose to leave their husbands. In addition to its activities of

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<sup>44</sup> Patel Vibhuti, *Emergence and Proliferation of Autonomous Women's Groups in India, 1974-88*. In Ghedialy Rehana, op. cit., pp. 249-56.

<sup>45</sup> Details of the campaigns in these cases in Chapter on Women's Movement and Violence.

counselling and assisting approximately 200 women each year, Saheli helps to organize demonstrations in the capital against the inadequacy of laws protecting women.<sup>46</sup>

As in most of the autonomous organisations, while the members of Saheli seek to help women who come to them with concrete problems, to raise their consciousness and ultimately to empower them, they simultaneously seek to empower those who are within. Thus at a national conference of eighty-five autonomous organizations held in 1985, in addition to workshops exploring specific issues like personal law and women's health; communications among the groups and how to use the mainstream media; and the relationship of the autonomous organizations to the police and courts, there was also a workshop on the "politics of personal growth".<sup>47</sup>

The quest of the autonomous organizations for rights and empowerment is limited by their small numbers and tiny membership; their insistence on collective decision making dictates that the organizations must remain relatively small in size. At present autonomous organizations exist all over India.<sup>48</sup>

There are three women's organizations in India that bear special mention for their work among the urban self-employed, or, as they are

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<sup>46</sup> Saheli, The first four years pamphlet, Saheli, N. Delhi, p. 15.

<sup>47</sup> National Conference, Perspectives for the Autonomous Women's Movement in India: a report. Bombay, 1985, CWDS, N. Delhi.

<sup>48</sup> Organizations from the following states and cities attended the 1985 conference: Andhra Pradesh, Assam, Bihar, Delhi, Goa, Gujarat, Karnataka, Kerala, Maharashtra, Nagaland, Orissa, Punjab, Tamil Nadu, Uttar Pradesh and West Bengal.

often called, workers in the “informal” or “unorganised” sector. These are the Self-employed Women's Association of Ahmedabad, Working Women's forum in Madras, and Annapurna Mahila Mandal in Bombay.

Women in the urban informal sector work at a variety of tasks, most of them yielding extremely low pay. They are domestic servants, rag pickers; vegetable vendors; piece workers at sewing, at biri rolling, papad making etc. Although in India there are many laws designed to protect workers, such as minimum-wage laws, and women workers in particular, such as the Equal Remuneration Act (1976) and the Maternity Benefit Act (1961), these donot apply to the unorganized sector. And the vast majority of women who work - well over ninety percent - do so in the unorganized sector”.<sup>49</sup>

This percentage has been increasing, as women have been forced out of the organized sector through a combination of increased mechanization and women's limited access to skills training, Technology has replaced unskilled labourers, particularly in textile factories and mines, and it is women who have been let go; both the percentage of women throughout India who work for remuneration and the percentage of women as members of the total labour force have declined.<sup>50</sup> The decline is particularly striking in the organized sector. In 1925, women were 20 percent of all workers in cotton mills nationally; 15 percent of all jute workers; and 38 percent of all who worked in the mines. By 1975, women

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<sup>49</sup> Mukhopadhyay, Silver Shakes: Women and Development in India, Oxford: Oxfam 1984, p. 49. Also, The Shram Shakti Report. Report of the National Commission on Self Employed Women and Women in the Informal Sector, June 1988, New Delhi.

<sup>50</sup> Shram Shakti Report, op. cit.

were 2.5, 2.0 and 5.0 percent of the workers in those respective industries.<sup>51</sup>

As women have been forced out of paid factory labour in the cities, they have been forced to become self-employed, or to work at exploitative rates at non-unionized jobs outside of Government control. SEWA (Self Employed Women's Association of Ahmedabad), WWF (Working Women's Forum in Madras) and Annapurna Mahila Mandal in Bombay, each act as a combination trade union / credit advancing / social service providing agency for the informal sector worker. All the three organizations have empowered women by assisting them to fight for decent wages or to build them businesses, to improve their educations, and to develop unity, self-confidence and group power.

The ideological and tactical inspiration provided by these non-party grass-root organizations has been crucial to the emergence and growth of women's empowerment in both the urban as well as rural areas.

### **THE GRASS-ROOTS MOVEMENTS OF WOMEN IN THE DECADES OF THE SEVENTIES AND EIGHTIES :**

The early years of the decade of the seventies were witness to the new stirrings among women with numerous formal and informal groups formed in this period. It was the increasing disillusionment with the constitutional promise of equality for women in India which produced new campaigns and efforts. Besides these pressures, on the international

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<sup>51</sup> Jhabvala Rehana, *Closing Doors: A Study of the Decline in Women Workers in the Textile Mills of Ahmedabad* (Ahmedabad: SETU, 1985), p. 7.

scenario too, many activities to enhance women's status in India have been prompted ideologically and materially by international pressure. One critical event in the emergence of movement was the direct result of such international influence.<sup>52</sup>

In 1967 the United Nations General Assembly adopted the Declaration on the Elimination of Discrimination Against Women.<sup>53</sup> It followed up the Declaration with repeated requests to member states to submit reports on the status of women in their countries. In response the Government of India constituted the committee on the Status of Women (CSWI) in September 1971.<sup>54</sup>

The United Nations also declared 1975-85 as the International Women's Decade.<sup>55</sup>

The release in May 1975 of the Committee's report, 'Towards Equality' sparked immediate demand for governmental action. 'The data it compiled on women's inferior position in family life, in health care and in law, and with regard to economic, educational and political opportunity served as a jolt to the consciousness of many educated and politicized Indian both women and men, and helped spur their activism in a new direction.

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<sup>52</sup> Calman Leslie J., op. cit., p. 36

<sup>53</sup> Document 36, General Assembly resolution adopted the Declaration on the Elimination of Discrimination against Women. 7 November, 1967.

<sup>54</sup> The Committee was set up by the Department of Social Welfare, Ministry of Education and Social Welfare. The members of this committee are - Phulrenu Guha, Maniben Kara, Savitri Shyam, Neera Dogra, Vikram Mahajan, Leela Dube, Sakina a. Hasan, Urmila Haksar, Lotika Sarkar and Vina Mazumdar.

<sup>55</sup> Document 41, General Assembly resolution proclaiming 1975 International Women's Year A/RES/3010 (XXVII) The United Nations and The Advancement of Women 1945-1996. Department of Public Information, United Nations, New York.



The report stressed that the dynamics of social change and development had adversely affected a large section of women and had created new imbalances and disparities such as the declining sex ratio, lower expectancy of life, higher infant and maternal mortality, declining work participation, and illiteracy".<sup>56</sup>

Much of the document (CSWI Report) is a call for vigorous governmental action to improve the status of women. Significantly, the authors of the report located their advocacy of equality for women not only within the moral scheme of "social justice" but equally within the developmental needs of the nation as a whole. Women's equality, they argued, is "a basic precondition, for the social, economic and political development of the nation"<sup>57</sup>, and thus should be a governmental priority. The CSWI, in addition to detailing actions that government should take called specifically for movement activity. The report urges "community organisations, particularly women's organisations" to "mobilise public opinion and strengthen social efforts against oppressive institutions like polygamy and dowry" and "to mount a campaign for the dissemination information about the legal rights of women increase their awareness."<sup>58</sup>

'Towards Equality' is considered to be the first document of the contemporary women's movement. 'The CSWI Report led to a debate in parliament and the emergence of a new consciousness of women as critical inputs for national development rather than as targets for welfare

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<sup>56</sup> For details of discrimination against women in Health, Chap. on women & Health.

<sup>57</sup> CSWI Report, "Towards Equality", op. cit., p. 8.

<sup>58</sup> Ibid., p. 101.

policies. A second significant outcome was the recognition of women as a group adversely affected by the processes of economic transformation.<sup>59</sup> Therefore, Towards Equality constituted an important ideological first step in mobilising educated activists. Today, movement activists frequently cite the report as a crucial factor in raising their consciousness and motivating them to act.<sup>60</sup> The heat and energy generated by Towards Equality and the emerging research data provided the intellectual foundation for a new women's movement.<sup>61</sup>

The decades of the seventies and eighties also witnessed grass-roots movements for women's empowerment. The Shahada and Anti-Price Rise agitations in Maharashtra, SEWA and Nav Nirman in Gujarat and the Chipko Movement in Uttarakhand, Uttar Pradesh were some of the important efforts made by women at the grass-roots to better their condition and empower themselves.

### **Organising Landless Women in Maharashtra :**

Shahada in Dhulia district in Maharashtra was a tribal Bhil landless labourers movement against the extortionate practices of local landlords most of whom were non-tribals and treated the tribals as subhuman. In many parts of Dhule the tribals constituted forty to fifty percent of the population.

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<sup>59</sup> National Perspective Plan for Women 1988-2000, Ministry of State for Youth Affairs, Sports and Women & Child Development, 9.10.1988, p. xlii.

<sup>60</sup> Mazumdar, Vina, Member of the CSWI remembered her shock when she first read the data in the report. Her second reaction was anger and the feeling that "something has to be done". Bumiller, May You Be The Mother, p. 126.

<sup>61</sup> Forbes, Geraldine, Women in Modern India, The New Cambridge History of India, Cambridge Univ. Press, p. 243.

Shahada Taluk in Dhulia district of Maharashtra is an extremely rich and fertile area. In the nineteenth century it was inhabited by a tribal population who cultivated their own small independent farms. In the latter part of the century constant feuding between dynastics and conditions of war and instability forced the tribals to give up their farming and flee into the nearby mountains.<sup>62</sup>

In the eighteenth century, in an effort to resume cultivation, the British government offered tracts of land for sale at low prices. Since the tribals had been living in the forest, only a few of them were able to buy back small pieces of land. Most of the fertile land was bought by cultivating farmers from outside the area. The large farms of the non-tribals were farmed on a capitalist basis. Severe forms of labour bondage existed. Through small loans, the tribal labourers and their families were bonded for life.<sup>63</sup>

No Naxalite (CPI ML) had gone to work among the Bhils, nor had any established communist party built much of a base in this area; but followers of Gandhi, the Sarvodaya workers had long been working in this area. They were carrying out 'constructive work' such as education, anti-alcoholism and cleanliness campaigns. Dhule fortunately had found a leader amongst their Bhil community Ambar Singh, who was conscious

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<sup>62</sup> Savara Mira, Sujatha Gothoskar, Organising landless women in Maharashtra in Madhu Kishwar Ruth Vanita. In Search of Answers, Manohar, 1996, p. 159.

<sup>63</sup> Ibid.

enough of the needs of his people to accept an orientation to struggle and to welcome the young radicals who began to come to Dhule.<sup>64</sup>

This, then, was the setting for what was to become the strongest rural mass organization in Maharashtra, the Shramik Sangathan or 'Toilers Union'. The Shramik Sangathan began its movement with a campaign to win back land still officially owned by many Bhils but illegally occupied by the Gujar landlords, the 'land liberation campaign'. Besides, through gheraos and satyagrah, the Shramik Sangathan managed to get more famine relief work from the government for Shahada than any other area in Maharashtra received.

'Among the labourers who were active in the movement, women apparently played the most militant role.'<sup>65</sup>

Gail Omvedt narrating her first hand experience as a participant in the Shahada movement writes,

"What I found interesting was the way women were involved ..... If the collective spirit of the people was impressive, it was the women and young girls who seemed to embody it the most, as they sang sitting in huts or marching through the village. They were more free and spirited, more collective in their singing, than other village women I had met, and this reflected the somewhat greater customary freedom for women among the Bhils. But it also reflected Shramik Sangathan organizing ..... Here were

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<sup>64</sup> Omvedt, Gail, *We Will Smash This Prison! Indian Women in Struggle*. Orient Longman Limited, N. Delhi, 1979, p. 91.

<sup>65</sup> Savara Mira, Gothoskar, op. cit., p. 163.

young girls, thirteen or fourteen years old singing - but these were not love songs but political songs, songs of struggle. They sang about their confrontations with the landlords and about going to jail, about how they were no longer afraid of the police, and had succeeded in getting prices lowered by the local merchants. And they sang of the 'new wave' that had come to the villages with the Shramik Sangathana: how because of organizing, drunkenness had diminished, husbands were not beating wives so much .....".<sup>68</sup>

Within two years, a movement involving thousands of women had grown. 'As women's militancy developed in the movement, gender-based issues began to be raised by them, following a pattern: where a community expresses consciousness of its own oppression as a community through a protest movement in which women are acknowledged to be active; at a certain stage women apply this consciousness to questions of their oppression as a sex.

Ashok, one of the organizers of the Shahda movement narrates, "In one of our Shibirs (camps) in April 1973, we expected 25 women - 125 showed up. None of us really knew how to handle it; all the organizers, including Ambar Singh, were men. So we simply let the women take over. One by one, they stood up and told their problems. And at the end one woman gave a summary. She said: 'The problem is, we need unity, we need organization. But the men won't organize themselves! Why? The answer is – daru! alcohol. They drink too much. They become incapable of doing anything

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<sup>68</sup> Omvedt Gail, op. cit., p. 93.

and resort to wife beating".<sup>67</sup> Interestingly, women in the Shahada movement raised the same question as some women in the pre-independence communist movement had done: the problem of wife-beating.<sup>68</sup>

According to Mira Savara and Sujata Ghotoskar, the raising of this issue led to the development of a women's anti-alcohol agitation with groups of Bhil women going to liquor dens and breaking all the liquor pots, for many men got drunk and beat their wives. Beginning in late 1972, the anti-alcohol agitation continued into 1973, growing in strength so that women from one village would go to others to break liquor pots. In March Shramik Sangathan organized a women's Shibir (camp) at which women from Karamkheda village described how their husbands drank and beat them up and asked the women at the camp to help them eradicate liquor from their village.<sup>69</sup>

There and then, it seems, the women got up and marched to the village, and on the way they were joined by more and more women from villages along the route. On entering Karamkheda, they went and broke all the pots in the liquor den, then went and gheraoed the police inspector and asked him why the liquor dens were not closed down. Further, Mira Savara and Sujata Ghotoskar described how, in a village named Moad, 'women moved around in bands to break liquor pots and terrorize the ruffians of the village'.<sup>70</sup>

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<sup>67</sup> Kumar Radha, *The History of Doing, Kali for Women*, N. Delhi, 1993, p. 100.

<sup>68</sup> *Ibid.*

<sup>69</sup> Mira Savara, Sujatha Ghotoskar, *op. cit.*, p. 168.

<sup>70</sup> *Ibid.*

In the following months it seems that some sort of organized network of women within and between villages had formed, and if any women reported that her husband had beaten her, the others would get together and beat him in public, and force him to apologise to his wife in front of everyone.

‘The Shahada Movement, thus, moved from protesting against alcohol vending and consumption to attacks on wife-beaters; from an indirect protest against violence in the family to a fairly direct one, making a public issue of what is generally regarded as a private problem.’<sup>71</sup>

A comparison of the Shahada anti-alcohol agitation with the one in Uttarakhand several years earlier is interesting, for the difference in both methods and attitudes towards alcohol was quite pronounced. Though both concentrated on protesting against the vendors rather than consumers of alcohol, the Uttarakhand agitation relied largely on shaming the vendor and arousing his better feelings, through non-violent Satyagrah while the Shahada agitation seems to have relied primarily on material punishment, breaking liquor pots, chastising errant husbands, and so on. Again, the Uttarakhand agitation seems to have seen alcohol as the chief evil whereas in Shahada women moved from protest against alcohol sale and consumption to direct attacks on wife beaters. Anti-patriarchal sentiments it seems, were expressed in the Shahada movement, but remained dormant in Uttarakhand due to a combination of factors - the difference in social structure and attitudes towards women, the one being

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<sup>71</sup> Kumar, Radha, op. cit., p. 101.

a traditional caste society and the other tribal and of course the ideological difference between the activists in the respective movements.<sup>72</sup>

### **SELF-EMPLOYED WOMEN'S ASSOCIATION (SEWA) AND ITS EFFORTS TO EMPOWER SELF-EMPLOYED POOR WOMEN :**

The self-employed women's Association is one of the largest and most successful movement organizations. SEWA, had its beginnings in the labour union movement. Its midwife was the Textile Labour Association (TLA) of Ahmedabad, India's oldest and largest textile workers union. Formed in 1972 at the initiative of Ela Bhatt who worked in the women's wing of the TLA, the Self-employed Women's Association (SEWA) was an organization of women who worked in different trades in the informal sector, but shared a common experience of extremely low earnings, very poor working conditions, harassment from those in authority and lack of recognition of their work as socially useful labour.<sup>73</sup>

Sewa dealt with working women's needs as a woman – personal savings, health, creches, help in cases of wife beating, and so on. The group leaders were women, the staff was women, the services were for women.<sup>74</sup> The main aim of SEWA is the "Economic regeneration and social uplift" of self-employed<sup>75</sup> and other working women of the poorest sections in Ahmedabad and surrounding areas.<sup>76</sup>

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<sup>72</sup> Kumar, Radha, History of Doing, op. cit.

<sup>73</sup> Kumar, Radha, op. cit., p. 102.

<sup>74</sup> Jain, Devaki, 'Women's Quest for Power'. Vikas Publishing House, N. Delhi, 1980, p. 5.

<sup>75</sup> The word "Self-Employed" was deliberately preferred to informal or unorganized as it conferred dignity on the workers.

<sup>76</sup> Jain Devaki, op. cit., p. 26.



SEWA has adopted the twin strategies of struggle and development. Struggle, carried out mainly through the Union takes the form of fighting for one's rights. Development takes the form of building alternative economic structures such as cooperatives.<sup>77</sup>

As stated earlier, the main objective of SEWA is the "Economic regeneration" and "Social uplift" is a term which covers a wide range of variables, extending from women's status and participation in society to inter household behaviour and personal habits. The basic aim is the cultivation of self-confidence so that women are liberated from their ingrained self-image as weak and helpless members of society, occupation groups and homes. SEWA aims to establish itself as an institution with which women can identify themselves and on whose support they can rely to secure justice in matters relating to their occupation, their relationship with authority or even their family problems.<sup>78</sup>

SEWA believes that struggle is an essential part of development. In the process of development, there are many cases when injustice has to be effectively opposed, struggled against SEWA's experience has made the organization realise that in order to be effective, struggle has to be carried out at all three levels of injustice.

First, through direct action – meeting with and writing to the employers or the police, Morchas, demonstrations, satyagrahs and strikes

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<sup>77</sup> Jhabwala Rehana, 'Women's struggle in the Informal Sector', Two Case Studies from SEWA, Paper presented at IAWS Conference, Oct. 1986.

<sup>78</sup> "Working for Women", India Today, 28 Feb. 1985, pp. 134-135. Also Anklesaria Shahnaz, "United They Gain Face", Statesman, 19 Dec. 1983.

are the most effective forms of direct action. SEWA deals with government departments through complaints and uses the legal structure by filing cases in court. Finally, SEWA endeavours to bring about policy changes to make labour laws more responsive to the self-employed sector.<sup>79</sup>

SEWA's dedication to expanding cooperative ventures for women in both urban and rural areas may be seen as an effort to build empowerment. The leadership sees these alternative economic structures as a laboratory for a more broadly cooperative economic system. The expectation is that, after being started up with the help of organizers and outside funds, the cooperatives will be turned over to women who work in them; the women should make the decisions and control the resources that affect their futures. So far, this plan is working according to Rehana Jehabvala, SEWA's Secretary, cooperatives that have been in existence for more than three years have become self-supporting.<sup>80</sup>

In the process of organizing economic cooperatives, SEWA workers also address social issues of importance to women, including dowry and rape, and emphasize the critical importance of unity, organization, and self-reliance for solving these problems. Organizers stress the participatory nature of their enterprise: the goal of SEWA's leaders is to be dispensable, and for the movement to be run entirely by its members. In the words of Ela Bhatt SEWA's founder member, "I and my colleagues

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<sup>79</sup> Jain, Devaki, *op. cit.*, pp. 20-76.

<sup>80</sup> Cited in Calman J. Leslie, *op. cit.*, p. 101.

think of ourselves as matchsticks only. Matchsticks are used to light a lamp, (they are) useless once their appointed task is over.<sup>81</sup>

'Interestingly, some sections of the women's movement which arose in the late seventies, did not claim SEWA as a precursor, criticizing it instead for its reformism. SEWA itself maintained a distance from the feminists, perhaps because it felt they were 'westernized' or too radical'.<sup>82</sup>

Shahada, on the other hand, was definitely claimed by the feminists, partly because of its direct attack on male violence and partly because it spawned many of the feminists of the late seventies. In a rather different way, the feminists of the seventies also noted the Anti-Price Rise agitation in Bombay and the Nav Nirman Movement in Gujarat as precursors, but more because they involved thousands of women in activism than for the nature of activism.<sup>83</sup>

#### **URBAN WOMEN AND RISING PRICES; THE ANTI PRICE RISE CAMPAIGN :**

The conditions of drought and famine in Maharashtra also led to a rise in prices which affected urban areas. In 1973 Mrinal Gore of the Socialist Party and Ahilya Ranganakar of the CPI-M together with many others formed the United Women's Anti-Price Rise front to mobilize women of the city against inflation just as women ... of the rural poor had been mobilized in the famine agitations.<sup>84</sup>

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<sup>81</sup> Cited in Tushar Bhatt, "Good Samaritans", Sunday 2-8 December 1984, p. 45.

<sup>82</sup> Kumar, Radha, op. cit., p. 103.

<sup>83</sup> Ibid.

<sup>84</sup> Patel, Vibhuti, Reaching for half the sky, antar Rashtriya Prakashan, Baroda, 1985, pp. 8-10.

The Anti-Price Rise Movement (APRM) was undoubtedly the most massive women's mobilisation in recent years with 10,000 to 20,000 women responding with great enthusiasm to the APRM. The reasons for this overwhelming response and turnout have their roots at one level in the marginalisation process precipitated by capitalist development and on the other in the culture of survival of the working class and lower middle class woman in Bombay.<sup>85</sup>

The movement grew rapidly, becoming a mass women's movement for consumer protection, demanding that both prices and distribution of essential commodities be fixed by the government, so many housewives were involved in the movement that a new form of protest was invented, with housebound women expressing their support for women demonstrating against price rises and hoarding by beating Thalís and Belan (rolling pins). The demonstrations themselves were huge, with around ten to twenty thousand women going to 'gherao' M.P.s and industrialists and offer them bangles as a token of their (the industrialists) emasculation or to raid warehouses where goods were hoarded.<sup>86</sup>

This mobilization against price-rise and hoarding was the most massive ever seen in the heart of Indian Capitalism – Bombay. "Women storming into the streets; women marching not in hundreds or thousands but in tens of thousands beneath the crowded apartments and the endless tiny shops, beating with their steel or brass plates with heavy spoons to

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<sup>85</sup> Gandhi Nandita, *When The Rolling Pins Hit The Streets, Kall for Women*, N. Delhi.

<sup>86</sup> Kumar, Radha, *op. cit.*, p. 103.

raise a thunderous din, women barricading the cars of politicians and storming the offices of Bombay merchant kings, women confronting the Minister of Food Supplies in his own kitchen to find out if the family eats the ration food they have to eat".<sup>87</sup>

The APRM constituted the United Women's Anti Price Rise Committee, a militant mass organization. It was formed as a coalition of various Socialist and communist parties at the end of 1972 in Bombay. According to government statistics, 80 percent of all women are non-worker housewives, and it is these women often considered the most 'backward' and tradition-bound, who have gone into the streets in their tens of thousands on consumer issues. And, in taking up these issues, the women's APR Committee has brought women into struggle on a mightier scale than ever before.<sup>88</sup>

The massive mobilization of housewives against rising prices didn't happen spontaneously but was organized by party leaders. At the head of the Anti-Price Rise Committee are the 'party women' that is leaders of such organisations as the Shramik Mahila Sabha, the Samajwadi Mahila Sabha, the National Federation of Indian Women – which are in turn the 'mass fronts' of the left parties, the CPI (Marxist) the Socialist Party and the Communist Party of India.<sup>89</sup>

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<sup>87</sup> Omvedt Gail, *We Will Smash This Prison*, op. cit., p. 77.

<sup>88</sup> Omvedt: *We will Smash This Prison / Indian Women in Struggle*, Orient Longman Ltd., Bombay, 1979, p. 77.

<sup>89</sup> Gandhi, nandita, *When The Rolling Pins Hit The Streets*, op. cit.

The APRC has succeeded in involving almost all urban classes from workers and slum dwellers to middle class employees, and in the process it has taken up most of the symbols of Indian Women's traditional 'place' in the kitchen - but has transformed these into weapons. Thus the committee began with a 'march of extinguished culls' (the traditional kind of stove used by women) in which nearly 1,000 women carried small stoves through pouring rain to symbolize the lack of food. It went on to hold a thali-beating march (the thalis are the traditional steel or brass plates) and it climaxed with the Belan or rolling Pin March of 20,000 women in 1973. The badge of the movement has become the rolling pin, brandished in a clenched fist as a weapon of revolt.

Mrinal Gore, a vivacious socialist leader in her middle forties led this movement. Like everyone else, Mrinal is outspoken about the special militancy of women. In an interview to Gail Omvedt an activist, writer and teacher she said, "we are organizing women to understand the problems behind price rise, so they can be prepared to agitate on a big scale to bring pressure on the government to change its policies – and if they won't change, we will change the government". When Gail Omvedt asked, "Do you think women can do this?" The prompt reply was, "Oh yes, women can do this better than anyone! They are more firm once they decide. We experienced this when we went to Vartak, the Civil Supplies Minister. We organized uneducated ladies, those who were not active in any political party but were really agitated over ration cut and bad quality of rice supplied, when we went to Vartak we asked him, "what rice do you eat?"

"The same as you", he told us, "No, I want to see", said one woman. Vartak tried to avoid this for an hour. Finally this woman got up, went into the kitchen, pulled out his rice and he had to admit that he was not eating ration rice but expensive free market basmati rice, "Why do you lie? do you know what food we have to give our children?" She berated him continuously, 'That firmness, that feeling from the heart of the way her children were suffering, made that woman speak!<sup>90</sup>

The characteristics of the anti-price rise agitation was its conscious limitation to the issue of prices, and the alleviation of the housewife's hardships. Its anti government agitational approach was meant to politicise women, give information on the parliamentary frame-work and the administrative functioning of the government. Women's issues were considered social issues. The clear distinction between the two excluded specially women's issues like rape, or dowry etc. from the arena of politics.

Nandita Gandhi in her study of the Anti Price Rise Movement in Bombay 1972 has analysed this movement and has concluded, "The Anti-Price Rise agitation with its ad hoc, single issue, and primarily agitational approach has all the features of a campaign. A campaign is a series of actions which call for corrective measure without challenging fundamental structures and relationships. Prolonged agitations or campaign are often labelled movements. However, a movement has been defined as "a sustained effort made by a section of society to bring about total or partial change through collective mobilisation based on an ideology which is

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<sup>90</sup> Omvedt Gail, op. cit., pp. 78-79.

either present in the beginning or emerges in the course of the movement.<sup>91</sup> Social movements like the Reform and the Nationalist Movements did take up women's issues but as a part of their program. A women's movement not only specifically takes up women's issues but links them to other issues and systematically questions premises and assumptions of women's lives and work in understanding women's oppression and for building strategies for the transformation of unequal social, political economic and ideological relationships between women and men in society. It develops a vision of change which takes in the present and moves into the future. The only vision the APR Samiti had was to bring down the State Government. Perhaps it might have developed into a movement if it had not been so abruptly hatted by the National Emergency. perhaps the militancy and enthusiasm of the mass of women might have transformed the agitation into a dynamic movement of women giving a new identity, pride and place to women in the making of a truly egalitarian society.<sup>92</sup>

#### **WOMEN IN STRUGGLE : ROLE AND PARTICIPATION OF WOMEN IN THE CHIPKO MOVEMENT :**

The Second Citizen's Report (CSE) on the State of India's Environment points out that :

Probably no other group is more affected by environmental destruction than poor village women. Every dawn brings with it a new march in search of fuel, fodder and water. It does not matter if women are

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<sup>91</sup> Rao MSA, Ed. Social Movements in India, Vol. II, Manohar Publication, New Delhi, 1978.

<sup>92</sup> Gandhi, Nandita, op. cit., p. 24.



old, young or pregnant: crucial household needs have to met day after weary day. As ecological conditions worsen, the long march becomes longer and even more tiresome. Caught between poverty and environmental destruction, poor rural women in India could well be reaching the limits of physical endurance.<sup>93</sup>

As long ago as 1952 the Indian government targetted that 33 percent of the geographical area of India was to be brought under forest cover in order to have an ecologically balanced environment.<sup>94</sup> The Government's Approach to the Seventh Plan reiterated this saying: 'the highest priority should be given to restore forest cover with 33 percent of the geographical area of the country being brought under forests from the present level of 23 percent. Measures should be intensified to restore forest cover to the full where it is at present degraded ...'<sup>95</sup> In other words, the target was never achieved.

The consequences have been expecially grim for women, rural women have to traverse greater distances and spend more hours collecting fuel, fodder and water in some areas, the distance covered in search of these has qudrupled from 2 to 8 km, while the extension of hours spent in collection of basic survival necessities has both cut time available for wage labour and stretched the normal working day to 14-15 hours.<sup>96</sup>

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<sup>93</sup> The Second Citizens Report on the Environment, Delhi, Centre for the Study of Environment, 1987.

<sup>94</sup> Vohra, B.B., *The Greening of India*, Delhi, Intact Environmental Series, 1985, p. 1.

<sup>95</sup> Quoted from *The Approach to the Seventh Plan* in B.B. Vohra, *op. cit.*, p. 1.

<sup>96</sup> Kumar, Radha, *History of Doing, Kali for Women*, N. Delhi, p. 183.

The health effects of this highly increased work load are naturally detrimental. And to these must be added illness due to inefficient stoves in closed rooms, while scarcity of fuel in conditions of poverty often forces women to cook faster – cooking less nutritious foods, or to undercook – both of which increase their ill-health, as well as that of their families.<sup>87</sup>

This is the depressing background of the Chipko Movement.

In 1973, a non-violent agitation took shape in the Uttar Pradesh Himalayas in the form of 'Chipko Movement' to protect the forests from exploitative commercial policies. The word 'Chipko' means to 'hug' or to 'cling'. This grass-root movement, deploying a novel method of protest against the forest policies of the government, has drawn world-wide attention of environmentalists, scholars and the women's movement.<sup>88</sup> Describing Chipko as a civil disobedience movement, a forestry economist thinks that its 'modus operandi' is somewhat histrionic and involves physical interference with felling operations by embracing each marked, condemned trees in a desperate bid to rescue it from the lethal strokes of the axeman.<sup>89</sup>

It is said that in its essence, the 'Chipko Movement' is very much a women's movement, since women are the real strength behind it.

"... The real strength of the movement are the women of the region  
... The Chipko Movement essentially consists of a string of spontaneous

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<sup>87</sup> Ibid.

<sup>88</sup> Kumud Sharma, Kusum Nautiyal and Balaji Pandey, *Women in Struggle: Role and Participation of Women in the Chipko Movement in Uttarakhand Region of Uttar Pradesh*, Centre for Women's Development Studies, N. Delhi.

<sup>89</sup> Pant, M.M. "Social Forestry in India", Forest Research Institute, Dehradun.

confrontations. Women, acting entirely on their own rose up at the spur of the movement. While in Reni (Chamoli district) the protest was against a timber contractor, in all other cases the protest was against their own cash hungry men, who could not care less if the forest was destroyed while their women had to walk for many more miles to collect their daily load of fuel and fodder.<sup>100</sup>

The area with its heavy male migration to plains places the entire burden of subsistence on women in this region. The official view point on the genesis of the 'Chipko Movement' has a very different explanation to offer.

"Notwithstanding the significance of the name and the fact that initially the movement manifested itself in the form of protest against felling of trees by forest contractors in government forests, its roots lay in the intense feeling amongst the local people that they are not getting sufficient advantage out of the benefits flowing from the forest resources, the only worthwhile resource in the area, and even the contracts for its exploitation are secured mostly by the outsiders and they have been victim of neglect and exploitation."<sup>101</sup>

The incident that sparked off the action in 1972-73 was the allotment of Ash trees to the Simon Company – a large sports goods manufacturers in Allahabad. While a local organisation known as Dashauli Gram Swarajya Sangh (DGSS) in the Chamoli district was refused

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<sup>100</sup> "The State of India's Environment: A citizen's Report 1982", Centre for Science and Environment, New Delhi, p. 43.

<sup>101</sup> Tripathi, N.P., "Chipko Movement - State Government's View", Forest Department, Uttar Pradesh.

permission to cut a few ash trees for making agricultural implements for the village people.

The growing discontent with the government's forest policy on the one hand and denial of a rightful share of raw material to the local forest based industries resulted in a showdown in 1972 when the forest department refused to give permission to DGSS for cutting a few ash trees from the Mandal forest about 14 km. from Gopeshwar, the district headquarter of Chamoli.

After heated discussions within the organization, a strategy was chalked out to 'hug' the trees when the Simon Company started cutting the trees. In April 1973 the Chipko movement was born which later spread to other parts of the Uttarakhand region, on 24 April 1973, the village folk marched in a procession to the Mandal forest allotted to the Simon Company and succeeded in saving the forest.<sup>102</sup> The permit was cancelled and the company was allotted trees in the forest of Phata Rampur in the Kedarnath valley. The scene of the activities shifted to Phata where another organised protest succeeded in saving the forest. The women organisers from Gopeshwar who had earlier participated in the Mandal incident, also went to mobilise women in the vicinity of Rampur Phata.<sup>103</sup>

The basic issue behind the first agitation was a protest against the monopoly of forest contractors and an assertion of local people's rightful

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<sup>102</sup> Misra, Anupam and Tripathi, Satyendra, "The Chipko Movement". also Joshi, Gopa, chipko Movement - What, Why and How?"

<sup>103</sup> Sharma Kumud, Nautiyal Kusum, Pandey Balaji, op. cit., p. 31.

share in the resources. The success gave a fillip to the movement. Questioning the entire system of forest management and the contractor system prevailing in this region.

The incident which added a new leaf in the chapter of the 'Chipko' movement as far as women's role in concerned, was an Reni village (in Niti Valley) in March 1974. Reni is one of the villages which suffered in the 1970 Alaknanda floods. In 1973 when the trees were marked in the village forest for felling, the Chipko activists from the DGSS had started foot march in the village in the catchment areas to mobilise and awaken local people. Since the DGSS people could not stop the auctioning of the Reni forest they organised a series of meetings to warn people of the impending disaster.

By now the Government was already familiar with the strategies of the movement, therefore the bureaucracy announced that all the men folk in Reni and other villages in the vicinity should collect compensation for their lands taken over by the government in the 60s for defence purposes. All the men rushed to the district headquarter of Chamoli on 26th March 1974. In the absence of men, a handful of 27 women defended their forests under the leadership of Gauradevi who was the president of the local women's organization. They kept vigil all night and when the men returned next day, Gauradevi told them that they have saved their 'mait' (Mait in Garhwali language means parental home) from destruction. The dependence of women on their forests was very symbolically expressed by them.<sup>104</sup>

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<sup>104</sup> Sharma, Kumud, Nautiyal, Kusum, Pandey, Balaji, op. cit., p. 31.

Again in June 1975 women stopped the felling of trees in a forest near Gopeshwar village by clinging to them. Here, under the leadership of Gaura Devi, women protested against the practice of government staff who used to cut down young, tender trees for their kitchen gardens. The staff women snubbed them so they gheraoed the staff quarters. They lifted the gherao only after they received an assurance from the district magistrate and a public apology for misbehaviour of the staff women. The men cooperated because the conflict there took the form of a tussle between women of two classes, and the village men supported women of their class against the wives of government employees.<sup>106</sup>

Within a few years the Chipko movement had spread all over Chamoli district and parts of Tehri Garhwal, with women being in the forefront in many places. Indeed, after their first entry into this movement, they have never looked back and have evolved their unique ways registering their protest. In Henwal Ghati, for example they protested the indiscriminate tapping of pine trees by dressing the 'wounds' of the trees with mud and sacking. Each protest, whether it was to embrace trees, or to bandage them, reinforced the women's closeness to nature, their belief that natural resources were theirs to protect and conserve, not to exploit and destroy. As the movement spread, women began to realize the need to get organized and to sustain the struggle. With the help of the Dasauli Gram Swarajya Mandal, an organization headed by Chandi Prasad Bhatt

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<sup>106</sup> Joshi, Gopa, *The Chipko Movement* in Madhu Kishwar Ruth Vanita Ed. In *Search of Answers*, Manohar, 1996, N. Delhi, 156. Also Bahuguna Sunderlal, *The Chipko Movement Women's Non Violent Power* in Madhu Keshwar Ruth Vanita Ed. In *Search of Answers*, Manohar 1996, N. Delhi, pp. 149-53.

women formed Mahila Mangal Dals in many villages<sup>106</sup> and many of them began to claim the right to decide what was done in forests and fields. These Dals also fought with the male dominated panchayat over the protection of their crops.<sup>107</sup>

As their participation grew, so did the confidence and motivation of the women. This was particularly evident in an incident in Dongri Paintoli village. here, the members of the all-male village council agreed to allow the U.P. Government to fell a local forest, in return for which the government would provide the village with a new road, secondary school, hospital and electricity. The women of the village, who lacked formal political power, nonetheless declared that they did not accept the decision of the village council and would fight the cutting of trees. They were, in turn, threatened by the men. Nonetheless, when, in February 1980, the tree cutters arrived, the women came out in large numbers and succeeded in driving the workmen away; within a month, the government banned the felling of trees in the area.<sup>108</sup>

The Chipko Movement added a new dimension to the perception of what constitutes "women's issues". The way in which economic development is to transpire so as to best fill human needs and the importance of environmental conservation were introduced as issues of central concern to women, while the movement created problems, particularly the sharpening of disagreements between women and men of

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<sup>106</sup> Kumar Radha, op. cit., p. 184.

<sup>107</sup> Ibid..

<sup>108</sup> Calman J. Leslie, op. cit., p. 94.

their communities.<sup>108</sup> It also heightened women's participation in public forums and their awareness of their own potentialities. Both in its expression of the empowerment of women and in the public issues it proclaimed as of concern to women, the Chipko movement was an important inspiration to the empowering of women in the movement.

#### **ACHIEVEMENTS OF THE CONTEMPORARY WOMEN'S MOVEMENT:**

Contemporary women's organizations have made efforts to make feminism acceptable among masses through plays, skits, songs, posters, exhibitions, newsletters, magazines etc. Presently, many feminist magazines are being published for example, from Delhi, *Manushi* and a newsletter, *Saheli*, are published in English as well as in Hindi, from Calcutta four Bengali journals are published: *Sachetna*, *Sabala*, *Ahalya* and *Maitreyi*, from Patna *Apni Azadi Ke Liye*, *Stree Sangarsh* and from Chhatisgarh *Awaz Aurat Ki* in Hindi, from Bangalore *Sangharsh* in English and *Samata* in Telegu, from Gujarat *Narimukti*, *Anasuya*, from Bombay *Women's Centre*, a newsletter in English.

Autonomous women's movement has also given rise to special interest groups. In Bombay, Delhi, Pune, and Kanpur many feminists felt the necessity for a women's centre – a place where women who have problems could go to for support – emotional, legal and medical. These are not forums for agitation but many of their members are also actively involved in agitational organizations. In Bombay – women's centre, in

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<sup>108</sup> Jain Shobita, *Women and People's Ecological Movement. A case study of Women's Role in the Chipko Movement in Uttar Pradesh*, *Economic and Political Weekly*, October 13, 1984, pp. 1788-1794.



Pune – Stree Adhar Kendra, in Delhi – Saheli, in Kanpur – Sakhi Kendra, and in Allahabad ‘Chetna’ and ‘Sahyog’ are such centers that provide services to individual women.

Autonomous women's groups have also generated feminist cultural groups with new songs, skits, plays, audio-visuals, slide shows, dance, dramas, films etc.

As a result of the pressure created by the women's movement amendments in the laws regarding rape, dowry, marriage had to be made, Muslim and Christian women have come out challenging their respective personal laws based on religion.

Now many women's organizations are trying to become active on the problems of working women. These organizations have started efforts to build separate wings within trade unions exclusively for women. In Bombay and Poona, Nari Sangharsh Samiti is such a feminist organization which struggle for the working women. In Dhulia, the tribal women of Shramik Sangathana have after years of arguments, ultimately formed Shramik Stree Mukti Sangathana. In Madhya Pradesh, Chhatisgarh Mahila Jagruti Sangh and Mahila Mukti Morcha<sup>110</sup>, in Ahmedabad, Self Employed Women's Association are also autonomous organizations of women.<sup>111</sup> The autonomous women's movement organizations are not only limited to educated urban women only. In Maharashtra, women activists

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<sup>110</sup> Sen, I., 'Mahila Mukti Morcha – Dalli Rajhare: A Report from a Women's Organization paper presented at the Second National Conference on Women's Studies, Trivandrum, April, 1984.

<sup>111</sup> Bhatt, E., SEWA Women Break Free from Parent Body, Manushi, 2, pp. 13-15.

have also made attempts to organize maid servants in many towns and cities.<sup>112</sup> Issues of temple prostitutes and tobacco workers are also taken up by them.<sup>113</sup>

### **INITIATION OF WOMEN'S STUDIES :**

It was because of the startling observations made by the Committee on the Status of Women in India (CSWI 1975) in its report 'Towards Equality' with regards to the declining sex ratio, the declining participation rate, the rising number of proportion of women among illiterates that a concern for women's issues emanated in academic circles. In response to this, the Indian Council of Social Science Research, initiated a sponsored programme of women's studies, to investigate the critical areas of information gap identified by the CSWI committee.

There is a lot of confusion in people's minds about the term women's studies. In view of this, Dr. Vina Mazumdar, Director Centre for Women's Development Studies has defined women's studies as "the pursuit of a more comprehensive, critical and balanced understanding of social reality. Its essential components include. First, women's contribution to the social process. Second, women's perception of their own lives, the broader social reality and their struggles and aspirations. Third, roots and structures of inequality that lead to marginalisation, invisibility and exclusion of women from the scope, approaches and conceptual frame-works of most intellectual enquiry and social action.

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<sup>112</sup> Bhaiya, A., Molkamis of Poona: A Report on the life and work of women domestic workers', How 5.1, pp. 15-19.

<sup>113</sup> Report, How, 1982.

Women's studies should, thus not be narrowly defined as studies about women or information about women, but be viewed as a critical instrument for social and academic development.<sup>114</sup>

Mazumdar also defined the objectives of women's studies as first, to conscientise both men and women by helping them to understand, recognise and acknowledge the multi-dimensional roles played by women in society. Second, to contribute to the pursuit of human rights. Third, to investigate the causes of gender disparities - analysing structural, cultural and attitudinal factors. Fourth, to empower women in their struggle against inequality and for effective participation in all areas of society and development. Fifth, to render invisible women visible – in particular women of the under privileged strata and finally, to help develop alternative concepts, approaches, and strategies for development.<sup>115</sup>

Thus, the two decades of the Indian Women's Movement (1970-90) under study have been the most eventful and meaningful years for women's empowerments and movement politics.

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<sup>114</sup> Mazumdar, Vina, Emergence of The Women's Question In India and The Role of Women's Studies, Occasional Paper No. 7, 1985, CWDS, N. Delhi, p. 14.

<sup>115</sup> Ibid., pp. 14-15.

## **CHAPTER 2**

### **THE WOMEN'S MOVEMENT'S CAMPAIGN AGAINST VIOLENCE**

## THE WOMEN'S MOVEMENT'S CAMPAIGN AGAINST VIOLENCE

The beginnings of the campaign against violence in post-independence India can be traced to the post-Emergency period 1970 when civil liberties groups, progressive organizations and political parties brought to light numerous instances of violence against women police atrocities, torture and lawlessness.<sup>1</sup> Two issues, proved particularly mobilizing: dowry deaths and the rape of women in police custody.

With the close of the emergency, a women's group closely associated with the new Janata Government, Mahila Dakshita Samiti, began to systematically investigate cases of "accidental" deaths - often by burning in alleged kitchen accidents - of young brides. Early in 1978, Mahila Dakshita published a report in which it alleged that many of these deaths, labelled suicide or accident by the police, were in fact murders; the report in turn, was widely publicized in the national press.<sup>2</sup>

A random survey of some newspaper clippings provide a good insight into the seriousness and magnitude of the problem.

"Wife allegedly burnt" : Usha Rani, a 22 year old housewife, and her parents were set on fire in their house on Monday night allegedly by her

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<sup>1</sup> Mahila Dakshita Samiti, Dahej Virodhi Manch, YWCA, AIWC were some of the organisations which campaigned against violence perpetrated on women through the given institutions of the State Community, the family and society at large.

<sup>2</sup> Madhu Kishwar, Ed. 'In Search of Answers', London : Zed Press, 1984, p. 31.

husband Nahar Singh, an autorickshaw driver ..... A case of attempted murder was registered. (Statesman, 4 June, 1986).

“Young woman burns herself”: Meenu burnt herself to death in East Delhi last night. The police said that the woman decided to end her life as her family found it difficult to make both ends meet ... The woman had a nine-month-old daughter. (Times of India, 5 June 1986).

“Haryana official victim of dowry”: Mrs. Dimpay Dalal, a senior officer of the Haryana Government, died of burns in her in-laws' house on Tuesday night, according to her relatives. Her husband Capt. Ajit Singh Lamba of the Army was arrested on a charge of abetment to suicide. In her dying declaration, she stated she had been tortured by her husband and in-laws for not bringing enough dowry. (Statesman, 6 June 1986).

“Dowry Death” : a young bride was allegedly killed by her in-laws for not bringing adequate dowry according to a First Information Report (FIR) lodged with the Manpur Police Station. The victim was thrown into a well by her relatives. (Times of India, 7 June 1986).

“Bring a Car or Drown yourself”: “Why don't you go and drown yourself”? For over a year 23-year-old Shanta had been repeatedly told this by her in-laws, and on May 10 she walked out of her home early in the morning and did just this. (Statesman, 8 June 1986).

“Burnt for a Refrigerator”: A young life was lost because of the rapacity of the in-laws. It began when the newly married Nirmal (24 years

old) was unable to bring a refrigerator as part of her dowry. Nirmal was burnt to death. (Statesman, 11 June 1986).

The above is a typical week's newspaper reporting in the nation's capital. The deaths of young married women are common, regularly reported upon since the women's movement drew attention to them in the late 1970s, and continue unabated. Protests began, and press coverage of these protests generated still more protests. In 1979, Mahila Dakshita Samiti demanded the strengthening of the 1961 Prohibition of the Dowry Act.<sup>3</sup>

The first protests against dowry in contemporary feminist movement were made by the Progressive Organization of Women in Hyderabad in 1975. Though some of their demonstrations numbered as many as 2,000 people, the protests did not grow into a full fledged campaign.<sup>4</sup> It was in Delhi that there has been a sustained agitation against dowry and dowry-related crimes. Among the reasons for this is that Delhi seems to have the highest number of murders of women for dowry. A memorandum from 13 women's organizations to the Lieutenant Governor of Delhi on December 2, 1983, claimed that the number of young brides who died of burns in New Delhi had shot up from 311 in 1977 to 610 in 1982.<sup>5</sup> In 1983, the Anti-Dowry Cell of the Delhi police reported 690 deaths of women by burning.<sup>6</sup> In 1984, there were some 600 deaths, however, only eight of these were

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<sup>3</sup> Mahila Dakshita Samiti, Report of Seminar on Amendment to the Prohibition of Dowry Act and Protection of Abandoned Women and Children.

<sup>4</sup> Radha Kumar, *The History of Doing*, Kali for Women, N. Delhi, 1993, p. 117.

<sup>5</sup> Indian Express, 3 Dec. 1983.

<sup>6</sup> Rajashri Das Gupta "Reaching Out Towards Brave New World", *Business Standard*, 10 March 1985.

classified as murder by Anti-Dowry Cell.<sup>7</sup> While cases in and near the nation's capital receive the most publicity, there is abundant evidence of dowry murders elsewhere. A study reported in *Economic and Political weekly* found that 34.2 percent of accidental deaths in urban Maharashtra and 64.9 percent of those in Greater Bombay in 1984 were due to burns. The highest percentage of deaths by "accidents" were in women aged 15 to 44. The researcher examined all the death and post-mortem certificates issued by the coroner and found a fact indicative of the unwillingness of the authorities to label dowry deaths as murder: "not a single of these certificates gives a cause that can provide even a minimum of a hint of how these accidents were caused".<sup>8</sup>

Most dowry deaths do seem to occur in northern India. The official statistics of registered dowry murders from 1982 to 1984 record Uttar Pradesh with the highest number 446, followed by Haryana 165, Punjab 122, Delhi 112, Rajasthan 83 and Maharashtra 76.<sup>9</sup> However, dowry deaths have spread to other areas. In 1987, 10 deaths were reported in Jammu and Kashmir. More dramatic according to government figures, has been the spread southward; registered dowry deaths in Andhra Pradesh leaped from 13 in 1985, to 79 in 1986, to 166 in the first seven months of 1987. In Tamil Nadu, the number jumped from 12 in 1985 to 38 in 1986. In Karnataka, there were 22 registered dowry deaths in 1984, and the

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<sup>7</sup> Neerja Chowdhury, "Some Haunting Question Marks", *The Statesman*, 6 July 1985.

<sup>8</sup> Malini Karkal, "How The Other Half Dies in Bombay", *Economic & Political Weekly*, 24 Aug. 1985.

<sup>9</sup> "Feeble Efforts", *The Hindu*, 1 May 1985.



number increased to 50 in 1987. Deaths have also been reported in Kerala, the state where women are most highly educated, reports have also come in from the small towns and villages of Gujarat, Orissa and West Bengal.<sup>10</sup> As these numbers represent only those cases which the police identified as dowry deaths, the number of woman dying violent deaths in what the police call "Suicides" and "accidents" is no doubt far greater.

The practice of dowry is expanding into more and more communities and castes. With the spread of capitalism and with a growing middle class, dowry takes on new dimensions, becoming a means for acquisition of consumer goods, or the capital that will seed a new family business venture or pay for the husband's education. Dowry death is in part a product of upward mobility; and is getting quite prevalent among lower-middle and middle classes.<sup>11</sup>

The feminist movement has fought dowry, dowry death and other forms of violence against women in the family by demanding both, better laws and better law enforcement. Agitational activity has taken a number of forms, and has been prolific. Though the Mahila Dakshita Samiti was the first women's organisation in Delhi's contemporary feminist movement, to take up the issue of dowry and dowry harassment, it was Stri Sangharsh whose campaign made dowry murder a household term. On June 1, 1979 Stri Sangharsh organized a demonstration against the death

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<sup>10</sup> "The Horror Spreads", India Today, 30 June 1988; "Public Outcry", India Today, 31 Dec. 1987.

<sup>11</sup> "Most deaths in lower middle class", Indian Express, 5 August 1983, "Dowry in Bombay: some observations", Sonal Shukla, Bombay: Women's Center, 1985, p. 20.

of Tarvinder Kaur, a young woman who lived in Delhi, saying that her death was murder and that she was killed because her parents could not fulfil the ever increasing demands of her in-laws.<sup>12</sup> While Tarvinder Kaur watched T.V. on the evening of 17 May 1979, her mother-in-law poured kerosene on her clothes and her sister-in-law set her afire. In spite of Tarvinder's dying statement to this effect, the police registered a case of suicide. Her father said, she had been under constant pressure to get more dowry from her parents, so that her husband could expand his motor, spare parts business. Tarvinder's mother cried, but not alone.<sup>13</sup>

Many women in Delhi cried out with loud voices against the murder of young Tarvinder. This case brought together individual activists and women from different political and civil liberty groups around a common platform and under the name of Stri Sangharsh.<sup>14</sup>

Manushi was actively involved in organising this demonstration. Manushi volunteers had for days gone from house to house covering a large part of Model Town to mobilise the neighbourhood and persuade people to join the demonstration. This was the first anti-bridal burning demonstration held in Delhi and became a sort of a model for protests against family based atrocities on women.<sup>15</sup>

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<sup>12</sup> Radha Kumar, op. cit., p. 119.

<sup>13</sup> Kishwar, Madhu, Ruth, Vanita Ed. In Search of Answers. Manohar, 1996, p. 178.

<sup>14</sup> Manushi no. 3, 1979.

<sup>15</sup> Gati, one more step ahead. Mainstream 20(52); 20 Aug. 1982, p. 14. Describes the movements organized by various women's organisations against bride burning and harassment by in-laws driving the victim to commit suicide. Also see Misra, Surat. Dowry Vs Family violence. National Workshop on family violence against females. New Delhi. Feb. 15-18, 1988 (Mimeo) (CWDS).

On 1 June, a large group marched through the streets of the middle class colony where her in-laws lived. It was a mixed group – students, teachers, working women, housewives and children, shouting angry slogans “Punish the murderers of Tarvinder”, “stop burning brides”, they marched to F 3/7 the house where Tarvinder was burnt to death. Her-in-laws, the Anands, stayed behind closed doors. But as the group approached, an old relative seated in the courtyard read out the Granth Sahib to out-shout the demonstration.<sup>16</sup>

On 12 June, the Nari Raksha Samiti organised a large procession from Chandni Chowk to Parliament Street, where a memorandum was presented to the Home Minister. There were working women, housewives with babes in arms, some burkha clad women and washer-women from as far as Majnu Ka Tila. The placards read “Arrest the killers of women”, “we will never give dowry nor let women burn”.

This demonstration was widely reported by the national press and in the next few weeks there was a spate of demonstrations against dowry deaths.<sup>17</sup>

The anti-dowry protests of 1979 and 1980 resulted in the appointment in Jan 1981 of a joint committee of parliament to review the Prohibition of Dowry Act, 1961; but the joint committee did not announce

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<sup>16</sup> Delhi's Dowry Murders. Mainstream, 21 (42); 18 June 1983, p. 31-32, 34. Police records of death by burning. How, 6 (3); March 1983; pp. 19-28.

<sup>17</sup> Sharma, Kalpana and Joseph Ammu. Dowry deaths; Crime without end. In whose news? the media and women's issues, Ed. by Amu Joseph and Kalpana Sharma, New Delhi. Sage, 1994, 32-42. Shah, Giriraj, Crime against women : dowry, divorce and bride burning. In violence against women. Ed. by Sushma Sood. Jaipur, Arihant, 1990, pp. 163-190.

its findings until 1982, and govt. took no action in the meantime.<sup>18</sup> In July 1982, Mahila Dakshita Samiti invited a number of other groups to join in a committee that would co-ordinate the struggle against dowry. Known as 'Dahej Virodhi Manch (DVCM) or forum to combat the Dowry Menace, it included the major organisations associated with opposition political parties, NFIW, AICCWW, AIDWA – as well as the YWCA, AIWC, a number of student groups, representatives from Manushi, the centre for Women's Development Studies, the War Widows Association, and the All India Federation of consumer organisations.<sup>19</sup> DVCM cut through broad political and ideological differences among women's groups, and under its auspices many protests took place, resulting in considerable publicity. In August 1982, DVCM marched on parliament, demanding revisions in the Prohibition of Dowry Act, 1961.<sup>20</sup>

In Feb. 1983 an anti-dowry conference was held in the AIWC hall, with 30 voluntary groups in attendance.<sup>21</sup> The following month, the prime minister received a delegation of Women MPs and representatives of DVCM, who urged her to promote passage of a new Dowry Prohibition Act and amendments to the Criminal Procedure Code, she gave assurances that she would do so.<sup>22</sup> By July 1983, parliament still had not acted, and the DVCM announced plans for ten days of demonstrations to mobilize public support for a new anti dowry bill. A few days later the Union Ministry

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<sup>18</sup> Leslie J. Calman, *Toward Empowerment : Women and Movement Politics in India*, 1992, West View Press Inc., p. 129.

<sup>19</sup> Hindustan Times, 2 July 1982, The Statesman, 18 March 1983.

<sup>20</sup> "Anti-Dowry March to Parliament", *The Voice of Working Women* (1982), p. 12.

<sup>21</sup> Times of India, 1 March 1983.

<sup>22</sup> The Statesman, 18 March 1983.

of Social Welfare agreed to give financial assistance to voluntary organisations who run short stay homes for battered women. On August 8, there was the beginning of the first legal break through. The Criminal Law (Amendment) Bill was introduced, this would amend the Indian Penal Code and the Code of Criminal Procedure to make cruelty to a woman by her husband or in-laws a punishable crime.<sup>23</sup> However, angry that the promised dowry amendment had still not been introduced, DVCM again demonstrated outside parliament. The demonstration was organised by five women's groups – Mahila Dakshita Samiti, All India Democratic Women's Association, YWCA, NFIW, AICWW – of which 4 were associated with opposite parties.<sup>24</sup>

The criminal law (second amendment) Bill was finally passed by the Lok Sabha in Dec. 1983; a comprehensive anti-dowry amendment, however, had still not been introduced, and demonstrations continued. On April 24, NFIW demonstrated outside parliament and 144 women were arrested. DVCM called for a "protest day" to demand the introduction and passage of such an amendment; it urged women to get their 'Thalis' and spoons to generate a din that "may awaken the govt. from its slumber."<sup>25</sup>

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<sup>23</sup> Indian Express, 10 July 1983 and 14 July 1983; The Statesman, 9 Aug. 1983. Also Agnes, Flavia, Marital Murders : the Indian reality. Legal News and Views, 7 (5); May 1993; pp. 163-165. Anklesaria, Shahnay, Married for burning: no basic change in dowry law. Statesman, 28 May 1984, p. 6. Chatterji, Shoma A. Is dowry-death immune to law. In Indian Women's search for an identity / by Shoma A. Chatterjee, N. Delhi, Vikas, 1988, pp. 86-99.

<sup>24</sup> Indian Express, 27 Aug. 1983.

<sup>25</sup> For report of DVCM Press Conference, The Statesman, 26 April 1984. Also, Das Manini, Women against dowry. Manushi No. 3, July-Aug. 1979, pp. 15-17. Deshpande, Anjali, New Lead for anti-dowry campaign, Mainstream 23 (46), 17 July 1982, pp. 29-30.

The agitational tactics of the women's movement was noteworthy. In addition to working for improved legislation by meeting with the prime minister petitioning and demonstrating outside parliament, holding press conferences and generating favourable publicity in the press, movement organizations have also acted with relation to the courts; they have demonstrated outside courts that have acquitted accused dowry murders, petitioned state govts. to file appeals in certain dowry murder cases, and petitioned the courts directly.<sup>26</sup>

Women's groups and civil liberties groups have also conducted their own investigations into deaths the police have deemed suicides or accidents and used the results to pressure higher authorities to intervene in local police matters; often, getting the attention of officials requires organised demonstrations as well.

Until this time women's deaths – by fire had been put down as suicide, and even these suicides were rarely seen as being due to dowry harassment.<sup>27</sup>

No one (including the police) had ever bothered to investigate these so-called suicides or even categorize them. And mostly they had been passed off as "private" affairs which took place within the family and which were no concern of the state. It was thanks to women activists that death

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<sup>26</sup> The Statesman, 8 Nov. 1983, Indian Express 3 Dec. 1983 and The Daily 1 Aug. 1984.

<sup>27</sup> Devdas, David. The horror spreads: bride burning. India Today, 20 June, 1988, pp. 86-88. See Dowry system and Violence against women (Country Paper for India), SAARC Workshop on Women and the Law, Dhaka, Dec. 28-30, 1986.

by fire was linked with dowry harassment showing that many official "suicides" were in fact murders.<sup>28</sup> In some cases, victims of dowry murder had often lived long enough to indict their husbands and in-laws of murder (in their dying declarations)<sup>29</sup>, but the obligatory police follow-up had been so delayed and so cursory as to yield little or no evidence, such cases were then written off as suicide and the whole matter forgotten.<sup>30</sup>

However, when feminists raised their voice against this situation, insisting that dying declarations be treated as evidence, that police procedures be tightened up, and these murders be confronted by society, some people did listen, and some joined in the protests as well.<sup>31</sup> The first Stree Sangharsh demonstration had trebled by the time it reached Tarvinder Kaur's in-law's house; not only did neighbours join in with their children, but so did sweepers, domestic workers, and passers by.<sup>32</sup>

On 30th of June residents of Malviya Nagar (N. Delhi) demonstrated against the murder of Kanchan Chopra.<sup>33</sup> The Nari Raksha Samiti organized several campaigns against dowry deaths.<sup>34</sup>

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<sup>28</sup> Subramanyam, Vimal. Dowry deaths and suicide theories. *Mainstream*, 22(41), 9 June 1984, pp. 26-27.

<sup>29</sup> In search of Answers, op. cit., 'letters written at Death's Door', pp. 204-5. It is interesting that of the eleven pieces in the section of the book entitled 'family violence' six are on dowry torture and murder.

<sup>30</sup> Ramakrishnan, "Matangi, Bride burning and dying declaration, Seminar on Crimes Against Women, Madras School of Social Work, Madras, Nov. 27, 1992.

<sup>31</sup> Chandrasekhar, K., Violence related with dowry. National Workshop on Family Violence against females, New Delhi, Feb. 15-18, 1988.

<sup>32</sup> Das Manini, Women against Dowry. *Manushi*, No. 3, July-Aug. 1979. This article discusses three cases of dowry demands and harassment. Two of these three led to the new bride being burnt to death by her in-laws. In each of these cases womens groups staged protests outside the homes of murderers.

<sup>33</sup> Wadhwa, Soma. The neighbourhood rises up against dowry deaths. *Sunday Observer*, 21-27 June, 1992.

After some months of campaigning however, several groups began to feel the need for a more direct method of communication with people when raising the issue of dowry. Discussions on this gave rise to the idea of having a street play and some months later Stri Sangharsh gave the first performance of its street play, *Om Swaha*, an attack on dowry and dowry murder, based on the lives of two women. The play proved enormously popular and soon people from all over began to ask the group to visit their locality and perform the play there. For many middle class women who were in the play, this was a first attempt at activist work.<sup>35</sup>

One year after the agitation began, govts. started to legislate against dowry murders. In fact in 1978, Charan Singh, then prime minister, had said that measures to stop the 'maltreatment of women for dowry' would be introduced in the next parliamentary session. He made this assurance to a delegation of the Mahila Dakshita Samiti.<sup>36</sup> The Samiti also met the Inspector General of Police (Delhi), who agreed to set up a standing committee, consisting of the Superintendent of Police and a Deputy Superintendent, who would deal with cases of dowry harassment. However, it took many years for the anti-dowry cells to begin functioning.<sup>37</sup>

The law has been a considerable disappointment to feminists. The single judgment (in the case of *Sudha Goel Dowry Murder case*) which

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<sup>34</sup> Radha Kumar, *op. cit.*, pp. 119-120. Also Subhadra Butalia, the agitation against Dowry in How, March 83, Delhi.

<sup>35</sup> Deshpande, Anjali. New Lead for anti-dowry campaign, *Mainstream*, 23 (46) 17 July 1982, pp. 29-30.

<sup>36</sup> Radha Kumar, *op. cit.*, pp. 120-121.

<sup>37</sup> Nambiar, Sonora Jha, Anti Dowry Cell a boon. *Times of India*, 23 April 1992. Also Police records of death by burning. How. 6(3), March 1983, pp. 19-28.



caused women to rejoice was soon reversed, and when they expressed disapprobation at this decision, contempt of court was slapped upon them. Early in Nov. 1983, Justice R.N. Agarwal reversed the judgement of S.M. Agarwal in the Session court, on the death of Sudha Goel. Justice S.M. Agarwal had found those accused of murder but Justice R.N. Aggarwal let them off because he said the evidence was inadequate.<sup>38</sup> Women's organisations. protested against the acquittal on Nov. 7th, in the High Court compound. A contempt of court petition was filed against three of these organisations, the Janwadi Mahila Samiti, Karmika and Mahila Dakshita Samiti. Justice Sachar and Justice Sen, who heard the petition, seemed sympathetic to the women, for they acquitted Brinda Karat and Subhadra Butalia of the Janwadi Samiti and Karmika respectively. Suman Krishan Kant of the Mahila Dakshita Samiti was held guilty because her defence made various personal digs at the judges.<sup>39</sup>

However, it was because of the sustained efforts of the women's movement that legal attitudes to dowry deaths started changing (for details of the changes in law as a consequence of activism see Chapter Women and Law).

In 1979 a Delhi-based feminist group Stri Sangharsh, made the following analysis of dowry :

As Engels pointed out in his classic work, property relations within the family were mediated through the development of private property,

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<sup>38</sup> Radha Kumar, op. cit., p. 124.

<sup>39</sup> Ibid.

and questions of inheritance became paramount. Engels used this to differentiate between middle-class and working-class families, saying that as working class families did not own private property, inheritance was not important and thus the material basis for women's oppression did not exist in working class families. In doing this, he not only wrongly identified women's oppression by missing the sexual division of labour, the need for reproductive control, the patriarchy, and the existence of female labour power as property under capitalism.<sup>40</sup>

### **RAPE :**

The campaign against rape is generally regarded as the catalyst which sparked off the women's movement in India. The fight against rape, while spear headed by the women in Bombay, was soon taken up by women organizations in different parts of the country.<sup>41</sup> Rape became an important issue for the women's movement during the early eighties. The immediate trigger was the infamous Supreme Court judgement in the Mathura rape case.<sup>42</sup> In fact, the first organised feminist response to the question of legislating on violence against women occurred in 1974 after the refusal of the Supreme Court to re-open the Mathura Rape case.<sup>43</sup> It is important to carefully scrutinize the Mathura case in order to understand why and how it became a catalyst to the anti-rape campaign.<sup>44</sup> Two

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<sup>40</sup> Radha Kumar, *op. cit.*, pp. 117-118.

<sup>41</sup> Ammu Joseph, Kalpana Sharma, *op. cit.*, p. 46.

<sup>42</sup> Tukaram and another V/s State of Maharashtra 1979 AIR 185 SC.

<sup>43</sup> Janaki Nair, *Women and Law in Colonial India*. Kali for women, and NLS, Bangalore, 1996, p. 234.

<sup>44</sup> Agnes, Flavia, *The Anti-Rape Campaign: The struggle and the setback in Chaya datar Ed. The Struggle Against Violence*, Stree, 1993, Calcutta.

diverse sections of society had played an important role in making the Mathura case an important one for the women's movement; the first was the local group in a small village, which had gathered at the dead of night outside the police station while Mathura was being raped, way back in 1972, and pressurized the police to register the case.<sup>45</sup> The second section was the legal experts who had written an open letter. Four highly regarded university teachers and law experts namely Prof. Upendra Baxi, Prof. Lotika Sircar, Vasudha Dhagamwar and Raghunath Kakar in a letter to the Chief Justice condemned the judgement and circulated it to progressive people all over the country, seven years later, in 1979.<sup>46</sup> Agitational activity, including the creation of the new autonomous women's organizations and newly coordinated efforts by a number of established women's groups, grew markedly in 1979-80. The Supreme Court decision was so gregariously contemptuous of women's rights that it sparked enormous reaction.<sup>47</sup>

The Supreme court with a "cold blooded legalism" had reversed the verdict of the Bombay High court and had acquitted two policemen accused of raping a 14 year old tribal girl from Maharashtra called Mathura. The judges believed that Mathura had willingly submitted to

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<sup>45</sup> Chatterji, Shoma A. Custodial rape In *The Indian Women's Search for an Identity*, Vikas, New Delhi, 1988.

<sup>46</sup> Khurshid, Salman. The Mathura Rape Case in the Supreme Court, *Journal of the Oxford University India Society*, 1(2) May 1980, pp. 8-11. Also Dhagamwar, Vasudha, "Mathura Rape Case - a rejoinder". *Journal of the Oxford University India Society*. 1 (3), Nov. 1980, pp. 2-6.

<sup>47</sup> For details of the Mathura Rape Case see Appendix 2.

"Rape: the Victim is the Accused." *Manushi* No. 4 (1979-80), pp. 42-46 and NANDITA HAKSAR - *Demystification of Law for Women* (New Delhi, Lancer, 1986), pp. 70-77.

sexual intercourse with Ganpat, a policeman she had never met before and his drunken friend Tukaram. They justified this claim by saying that there was “no reasonable evidence of guilt on the part of the policemen”. The opinion written by Justice Koshal found that as Mathura showed no evidence of injury, she must have consented. The Supreme Court also came up with a new twist : it is unlikely, the judges reasoned, that Mathura could have tried to shout and resist the policeman’s advances, as she claimed, since, when Mathura, her brother and her friends were leaving the police station, and the officers grabbed hold of her wrist and ordered her to stay, she did not even resist! Indeed, the Supreme Court hypothesized Mathura was a completely willing participant.<sup>48</sup>

To quote from the Supreme Court judgement, “It would be preposterous to suggest that although she (Mathura) was in the company of her brother, she would be so overawed by the fact of the appellant being persons in authority and that she was in a police station that she would make no attempt to resist ... Her conduct in meekly following (the officer) makes us feel that her consent (was not) passive submission.”<sup>49</sup>

Not everyone agreed. In Sept. 1979, four highly regarded university law professors, two of them men, two women<sup>50</sup>, wrote “An open letter to the Chief Justice of India”, protesting the Supreme Court decision. The tone of the letter is one of both outrage and shock at the absurdity of the

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<sup>48</sup> Leslie J. Calman, op. cit., p. 66.

<sup>49</sup> Tukaram vs. the State of Maharashtra (1979) 2 S.C.C. 143.

<sup>50</sup> Upendra Baxi, Raghunath Kelkar, and Lotika Sarkar were professors at the Univ. of Delhi, Vasudha Dhagamwar taught at the University of Pune.

Supreme Courts" logic. "Your lordship, this is an extraordinary decision sacrificing human rights of women under the law and the constitution ... Your lordship, does the Indian Supreme Court expect a young girl, 14-16 years old, when trapped by two policemen inside the police station to successfully raise alarm for help". Does it seriously expect the girl, a labourer, to put up such stiff resistance against well-built policemen so as to have substantial marks of physical injury ? ...

The fact remains that she was asked to remain in the police station after her statement was recorded and her friends and relations were asked to leave, why ? ...

One suspects that the court gathered an impression from Mathura's liaison with her lover that she was a person of easy virtue. Is the taboo against pre-marital sex so strong as to provide a licence to Indian police to rape young girls ? ...

The court gives no consideration whatsoever to the socio-economic status, the lack of knowledge of legal rights, the age of victim, lack of access to legal services, and the fear ... which haunts the poor and the exploited in Indian Police Stations. May we respectfully suggest that yourself and your distinguished colleagues visit incognito wearing the visage of poverty, some police stations in villages adjoining Delhi.<sup>51</sup>

The protest against the Mathura rape case was first launched in Bombay by a group of women from a variety of organisations as well as

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<sup>51</sup> For full text of the letter see "Rape: The victim is the accused", *Manushi* No. 4 (1979-80), pp. 42-46 and Nandita Haksar, *Demystification of Law for Women* (New Delhi : Lancer, 1986), pp. 70-77.

students, lawyers and concerned individuals, who had gathered together spontaneously, in 1979. These protests saw the formation of the 'Forum Against Rape (FAR).<sup>52</sup> The Forum Against Rape held some of the first public meetings, performed skits and demonstrated before the High Court. Its signature campaign for amendments in the laws relating to rape was picked up in other cities. Suggestions for legal changes initiated a nationwide debate among women and organizations which culminated in a National Conference hosted by the Forum Against rape in 1980.<sup>53</sup>

It is important to recognize the background of development of consciousness and the activities which preceded and led to the formation of the Forum Against Rape. Equally important is the fact that women working in different groups – development, trade unions grass root organisations and in professions and colleges recognised, and articulated the feeling of being a 'woman' instead of sublimating it.<sup>54</sup>

One of the immediate gains of the campaign against rape was that overnight, 'rape', a word which was hitherto taboo, became a household word, being discussed in drawing rooms. It was being discussed openly in newspapers, magazines, on the television and radio, in legal forums and in civil liberty and other progressive groups and in parliament.

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<sup>52</sup> Nandita Gandhi, Nandita Shah, *the issues at Stake*, op. cit., p. 40. Also Patel, Vimla, To all the members of parliament, a petition submitted by Forum Against Rape on 10 March 1980.

<sup>53</sup> Ibid.

<sup>54</sup> Gandhi, Nandita, *Sowing Seeds of Protest and Action - FAOW in A Decade of Women's Movement in India*, Ed. Dr. Neera Desai.

By Jan. 1980, several women's groups and organisation in Delhi, Bombay, Pune, Nagpur, Hyderabad, Bangalore and some parts of rural Maharashtra held meetings and protests at the local level. Soon an informal national level coordination took place which decided to hold countrywide protests on 8 March 1980, the International women's Day.<sup>55</sup>

In Bombay, the Forum Against Rape (later, Forum against Oppression of Women, FAOW) held its first meeting on 12 Jan. 1980. This was followed by a public meeting on 23 Feb. 1980 and a mass protest rally on 7 March 1980. There were huge protest rallies in several major cities and towns on 8 March 1980.

The Forum Against Oppression of Women - FAOW wrote to feminist groups all over the country to propose that demonstrations be held on International Women's Day (March 8), to demand a retrial of the Mathura Rape case. In effect, this was the first time that feminist groups came together across the country to co-ordinate a campaign. Groups in seven cities had responded to the FAOW letter and on March 8 there were women's demonstration in Bombay, Delhi, Nagpur, Pune, Ahmedabad, Bangalore and Hyderabad, demanding a retrial of the Mathura Rape case, the implementation of relevant sections of the Indian Penal Code (IPC), and changes in the law against rape. In Bombay and Delhi joint action

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<sup>55</sup> Agnes, Flavia, *The Anti-Rape Campaign: the struggle and the setback. In the struggle against violence* / Ed. by chhaya Datar, Calcutta, Stree 1993, pp. 99-105. Also Joseph, Ammu. Rape: impartial attitude absent. *Deccan Herald*. 15 Feb. 1989. Joseph, Ammu and Sharma, Kalpana. Rape: a campaign is born. In *whose news? the media and women's issues* / Ed. by A. Joseph Sharma Kalpana, New Delhi, Sage, 1994, pp. 43-50.

committees of feminist groups and socialist and communist party fronts mainly student, were formed to coordinate the campaign. Thus the campaign against rape marked a new stage in the development of feminism in India; the net works which had begun to form in 1978 were being consolidated and expanded, and used to co-ordinate action.<sup>66</sup>

On 17 March 1980 women's groups in Delhi held demonstrations outside the Supreme Court and demanded the re-opening of the Mathura rape case. Justice Y.V. Chandrachud, the Chief Justice who met the delegation, advised the women's organisation to go through proper legal channels to address the issue. So a review petition was filed by Bhartiya Mahila Federation and the women Lawyers Council. The petition came up before a Bench headed by the Chief Justice on 28 March 1980. The Chief Justice directed that the review petition should be heard by the same Bench which had delivered the judgement. When the petition came up before the Bench, the campaign received its first setback. On 3 April 1980, justice N.W. Untwalia (who had replaced Justice Jaswant Singh who had retired since the Mathura judgement) held that women's organisation have no locus standi to file a review petition. He strongly criticized the demonstrations and categorically stated that the courts would not be 'cowed down by rallies and slogan shouting'.<sup>67</sup>

Woman's groups, legal forums, civil liberty groups were not to be cowed down. On 29 March 1980, Geeta Mukherjee MP (CPI) tabled a

<sup>66</sup> Radha Kumar, op. cit., pp. 129-130.

<sup>67</sup> Women's organizations against rape in India: Report of a national meeting - Forum Against Oppression of Women. In women and Violence: realities and responses worldwide Ed. Miranda Davies, London, Zed Books, 1994, pp. 60-84.



motion for amending the rape laws which was supported by Susheela Gopalan (CPI) and Mrs. Sahi and Mrs. Vaidhya of the Congress (I). At the end of a prolonged debate, the Govt. assured the house that it would look into the demands. The initial motion referred only to rapes by police and goondas. During the debate it was suggested that the scope should be widened to include all rapes. Geeta Mukherjee further suggested that strict punishment should be meted out not only to people in custodial rape cases but also in cases of 'power rape' or 'Economic rape' as in the case of rapes by zamindars and contractors of landless labourers.<sup>58</sup>

Meanwhile, protests against incidents of police rape began to be reported from all over the country, besides feminists there were other groups who organized protests. In April, women students in Patna protested against the rape of a rickshaw puller's wife, Bachiya; and in the same month, in Vijayanagar, in Rajasthan, villagers surrounded the police station and closed it, following the 'molestation' of a widow by the 'Station House Officer'. In May angry mobs attacked the Bankura Police Station and set fire to some houses and shops in protest against the 'molestation' of a girl: the mob was tear gassed, sixteen were arrested and indefinite curfew declared. And in June, the subdivisional magistrate of Dhunda

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<sup>58</sup> "Interview of the Week: Geeta Mukherjee", Sunday Observer, 11 Dec. 1983. A study by the Bureau of Police Research and Development in 1983 found that accused rapists in rural areas "were mostly those holding women in positions of economic subordination", (Reported in "Rape: Controversial Code", India Today, 31 Dec. 1983, p. 134). There are also ample examples of massive, systematic rapes that occur during social and labour unrest by hired thugs of landlords or by the police against agricultural labourers or industrial strikers. See Shahnaz Anklesaria, "Women and Rape: Defenceless Before Laws and Man", Himmatt, 7 March 1980, pp. 13-18 and Uma Chakravarty, "Rape, Class and the State", PUCL Bulletin (People's Union for Civil Liberties) 2 : 9 (1982), pp. 16-17.

town, in Uttarkashi, was gheraoed after he attempted to rape a twenty year old woman in the district hospital. The gherao was only lifted when the Commissioner of Garhwal ordered the transfer of the SDM, Kulbe.<sup>59</sup>

It seems unlikely that these protests were stimulated by the feminist campaign against police rape, for, in contrast to the campaign against dowry deaths, they did not arise in the cities in which the feminists were active. What did happen, however, was that the protests got more coverage than they would otherwise have done, for the feminist campaign had been received with considerable enthusiasm by the press and as a result the problem of police rape was acknowledged in a new way. The kind of press coverage that was now given to the incidents of police rape and protests against them, created the impression that the issue was one which aroused anger all over the country, and was therefore of political significance.

The mounting pressure exerted by the galvanizing campaign forced the State to respond. The Govt. set up the eighty-fourth law commission to study the demands. Contrary to expectations the Law Commission showed great sensitivity to the issue of rape and to the urgency of the task before it and submitted its recommendations in record time. After holding meetings and inviting the response of women's groups the Law Commission sensitively scrutinized the demands and incorporated most of them in its recommendations submitted to the Govt. by June 1980.<sup>60</sup>

<sup>59</sup> Newspaper reports of April 4-5, 1980 for reports of Patna and Vijayanagar, Demonstrations, June 30, 1980 for Garhwal.

<sup>60</sup> Lotika Sarkar, National Specialised Agencies and Women's Equality. Law Commission of India, CWDS for details of the Law Commission Report and rape laws, see Chap. on Women & Law.

The campaign at the national level launched by the women's groups and organisations demanded reform in rape laws. The demand for legal reform centred mainly around the issue of 'consent'. The Supreme Court in the Mathura case<sup>61</sup> had held that absence of injuries and passive submission implied consent. So the major demand was that the onus of proving consent should shift from the prosecution to the accused. This meant that once sexual intercourse is proved, if the woman states that it was without her consent, then the court should presume that she did not consent. The burden of proving that she had consented should be on the accused.<sup>62</sup> The second major demand was that in a rape trial a woman's past sexual history and general character should not be used as evidence.<sup>63</sup>

The implications of shifting the onus of proof was discussed by civil liberty groups, press organisations, bar associations and political groups. There was an apprehension that it would set an undesirable precedence and become a weapon in the hands of the state to suppress progressive movements. The assumption behind this fear was that women would be manipulated into crying 'rape' on the least pretext and innocent men would be convicted. The fact that there were other offences like adulteration and

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<sup>61</sup> Salman Khurshid, "Mathura Rape Case in the Supreme Court", Vol. 1 (2), May 1980. Journal of the Oxford University India Society.

<sup>62</sup> Chhabra, Kirpal Singh. Absence of Consent: its meaning and importance in rape offence in India. In crimes and punishment in new perspective / Ed. by R.S. Agarwal and Sarvesh Kumar Mittal, Delhi, pp. 96-106.

<sup>63</sup> Agnes, Flavia. Journey to justice: procedures to be followed in a rape case. Bombay, Majlis, 1990, p. 68. Also see 'Our rights and wrongs: The New Rape Bill - legislating rape' of existence Manushi, No. 7, 1981, pp. 38-45. Argues that the bill to amend the rape law leaves untouched two very important points on which most rape cases hinge - the question of consent and of the woman's sexual history.

smuggling in which the burden of proof rests with the accused was conveniently overlooked.<sup>64</sup>

The women's organisations too were divided on the issues and it generated a heated debate at the national conference of women activists in Bombay in Nov. 1980, since the demand for shifting the burden in all rape cases was not accepted by many groups, a consensus was arrived at to recommend shifting the burden only in custodial rape cases.

Several groups and organizations all over the country had participated in the campaign and had raised wide range of issues concerning rape. Various groups in May and June 1980 voiced the need to hold a national conference to coordinate the work and evolve a common perspective. Accordingly the conference was held in Bombay in 1980 which was attended by around 200 women from various parts of the country.<sup>65</sup> The main objectives of the conference were: 1. to move in the direction of a national committee for suggesting changes in rape laws; and 2. to form a fact finding committee at the national level to investigate police and army rapes.

Besides the two main demands discussed earlier, there were several other demands made by various groups. One was that all state officials interacting with a rape victim should be women: a woman should be medically examined by a woman doctor, there should be women police

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<sup>64</sup> Flavia Agnes, *The Anti-Rape Campaign: The struggle and the setback*. In *The Struggle Against Violence / Stree*, p. 113.

<sup>65</sup> National Conference on the Perspective for Women's Movement in India, Bombay, Nov, 1-3, 1980.

to register the case, the trial should be conducted by a woman public prosecutor and women judges should decide rape cases. Further the trial should be held behind closed doors (in camera). Another demand was that there should be more stringent punishment for rapists which would act as a deterrent. Yet another important demand was that the power vested with the police in criminal matters should be strictly regulated so that there is no abuse of power.<sup>66</sup>

The demands were not debated by the women's movement in broader forums but were sent to the law commission by individual groups all over the country. As soon as the law commission had submitted its report, the government drafted a bill, supposedly on its recommendations. In the 1st week of August 1980, it was presented to the Lok Sabha by the then Home Minister, Zail Singh.

The Law Commission's recommendations included both the major demands raised by the anti-rape campaign, that is, regarding the onus of proof and the woman's past sexual history. The government bill did not include any of these positive recommendations. The demand that a woman's past sexual history and general conduct should not be used as evidence in a rape trial was excluded from the bill. The demand that the onus of proof regarding consent should be shifted to the accused was accepted partially, only in case of custodial rape, that is, rape by policemen, public servants, managers of public hospitals, remand homes

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<sup>66</sup> HOW 4:2-3 (1981), p. 27 published a statement by five Delhi Women's organizations – Delhi Women Lawyers Federation, Karmika, Manushi, Stri Sangharsh and Action India - which made these recommendations.

and wardens of jails. But the most disturbing features of the bill were the provisions which would strengthen the state and shield the rapists. The demand for in-camera trials had been transformed into a draconian provision imposing virtual press censorship. The bill sought to make publishing anything relating to a rape trial a non-bailable offence.

Many activists, lawyers and women's groups strongly criticized the bill. Indra Jaising of the lawyers collective Bombay, who was one of the most vocal critics of the bill, termed it anti-women and pro-police. Shree Shakti Sangathan, Hyderabad, Vimochana of Bangalore, Forum Against Oppression of Women, Bombay, and Manushi of Delhi were some of the groups which criticized the provisions of in-camera trials and demanded that the provision regarding past sexual history of the victim be included in the bill.<sup>67</sup>

Since, the bill was strongly criticized by women's organisations it was referred to a joint committee of parliament for further debate. It went into cold storage for a while which was very demoralizing for the campaign. Finally in December 1983 the bill was finally placed before the Lok Sabha. Women's groups which had vociferously attacked the bill were not even aware of the content of the revised bill and that is was being presented in parliament, without much fan fare the bill was passed and

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<sup>67</sup> Deshpanda, Anjali, Rape bill constructions, *Mainstream* 22(17), 24 Dec. 1983, pp. 31-32. Also Dhagamwan, Vasudha. Rape bill report; ominous aspects, *Mainstream* 21 (44), 2 July 1983; pp. 13-14; Discussion on new rape bill, National Conference on the perspective for women's movement in India, Bombay, Nov. 1-3, 1980, pp. 1-4, Kant, Anjali, Rape laws must be made sensitive to women's feelings, *Pioneer*, 5 April, 1994, p. 8.

became known as the Criminal Law (Amendment) Bill 1983. What started with a bang ended in a whimper.<sup>68</sup>

### **SATI :**

In September 1987, an incident of Sati (widow immolation) in a village in Rajasthan sparked off a campaign which gave rise to a furious debate which spanned not only the rights and wrongs of Hindu women but questions of religious identity, communal autonomy and the role of law and the state in a society as complex and as diverse as India's.<sup>69</sup>

Within a couple of weeks of the incident of Sati, a series of newspaper articles appeared. These appeared first in the Delhi-based Hindi and English language national dailies; Jansatta (Banwari) 29.9.87, Indian Express (Ashish Nandy, 5.10.87) and Statesman (Patrick D. Harrigan, 5.11.87) all three writers, in their various ways made an attack against the feminist movement for their anti-Sati tirade.

Perhaps the most striking point about the articles by Banwari, Ashish Nandy and Patrick Harrijan was that all three propounded their argument in the form of a polemic against the Indian faminst movement,

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<sup>68</sup> For the provisions of the criminal Law (Amendment) Bill 1983 see Chap. on Women and Law.

<sup>69</sup> Haksar, Nandita. Sati and national perspective, *Mainstream* 19 (16); 20 Dec. 1980, p. 29.

Focuses on the fact that the entire social phenomenon of Hindu revivalism must be analysed as a whole.

Joseph Ammu and Sharma, Kalpana, *The Roop Kanwar tragedy; in the name of tradition. In whose News? the media and women's issues.* Ed. by A Joseph and Kalpana Sharma Sage, 1994, pp. 70-87.

John Stratton, Hawley - sati the blessing and the curse: the burning of wives in India, OUP, 1994.

accusing Indian feminists of being agents of 'modernity who were attempting to impose crass market dominated views of equality and liberty on a society which once gave the noble the self sacrificing and the spiritual respect they deserve, but which is now being rapidly destroyed by the essentially selfish forces of the market. All three, moreover, defined these crass market-dominated views of equality and liberty as being drawn from the west, so Indian feminists stood accused of being westernists, colonialists, cultural imperialists, and - indirectly - supporters of capitalist ideology.<sup>70</sup> Strangely enough not one of these writers addressed themselves to the question of what had happened, or was happening, in Deorala where the Sati had taken place, nor did any of them ask under what conditions Roop Kanwar had lived, or under what conditions she had died.<sup>71</sup>

Sept. 1987 was not the first time that Indian feminists encountered the problem of Sati. The first encounter in Delhi was in 1983, when a campaign to further popularize the ideology of Sati was launched by a Marwari-funded organisation known as the Rani Sati Seva Sangh. The RSSS, which already ran several Sati temples in Rajasthan and Delhi, had got the then government to grant them a plot of land in Delhi to build yet another Sati temple, and had decided to celebrate this grant by leading a procession of men and women to the temple. Delhi feminists heard of this plan, and decided to hold a counter demonstration along the route of the procession, which they did with signal failure, partly because they had no

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<sup>70</sup> Radha Kumar, *op. cit.*, p. 174.

<sup>71</sup> Radha Kumar, *op. cit.*, p. 174.



time to mobilize, and thus found themselves outnumbered, and partly because this was the first time that they had to confront a group of women in a hostile situation. This was so distressing that it took the heart out of their demonstration. This experience of the feminists led to two different reactions: one, the determination to research into the existence of Sati, Sati temples and the 'proponents of 'Sati-dharma' in India; the other, to find non-confrontational ways in which to undermine the ideology of sati.<sup>72</sup>

Most distressing of all, however, was the way in which the processionists appropriated the language of rights, stating that they should have the right, as Hindus and as women, to commit, worship and propogate Sati. At the same time, they also appropriated feminist slogans on women's militancy, for example, 'Hum Bharat Ki Nari Hai, Phool Nahin, Chingari Hain'. The feminists who attended the demonstration experienced, therefore, the humiliating sense of loss which accompanies the discovery that your own words can so readily be snatched and turned against you to serve an antithetical cause.<sup>73</sup>

The issue of Sati emerged forcefully in 1987 with the Sati of Roop Kanwar. Given that there has been, over an average, something like one sati a year in India, why did this incident arouse such frenzy when others had not? Only four months earlier, the police had prevented a woman called Banwari from committing sati, and had dispersed the twenty thousand odd people who had assembled at Bagda village in Pali district

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<sup>72</sup> Radha Kumar, *The History of Doing*, Kali For Women, 1993, p. 174.

<sup>73</sup> Kishwar, Madhu and Vanita, Ruth. *The burning of Roop Kanwar*. In *Understanding Violence* Ed. Veena Poonacha, Bombay, RCWS, 1990, pp. 42-48.

to prevent the event.<sup>74</sup> Two years earlier in March 1985, the police had prevented another sati in Jaipur district and had used both tear gas and lathi charges to disperse the thirty thousand odd people who had collected at the proposed site.<sup>75</sup> In neither incident did police intervention result in agitations against them. Yet Roop Kanwar's death, which no one prevented, led to a massive agitation for and against sati. It was only as the campaign around the issue developed that it became evident that this particular sati was indeed different from most of the others. In contrast to some of the other areas in which sati had been attempted, Deorala was a relatively highly developed village. The family, while not perhaps wealthy, were well-to-do, Roop Kanwar's father-in-law was headmaster of a district school, while she herself was a graduate.

Roop Kanwar had only been married a short while before her husband died. Her dowry included some thirty tolas of gold. Her husband suffered from mental disorder and they had spent only around six months together. When, after his death, it was decided that Roop Kanwar would 'become' sati, the impending event was announced in advance, because sati is always a public spectacle. Yet her family was not informed. Evidence which trickled out pointed to murder: some of her neighbours said that she had run away to hide in a barn before the ceremony, but was dragged out, pumped full of drugs, dressed in her bridal finery and put on the pyre, with logs and coconuts heaped upon her. The pyre itself was lit by her brother-in-law, a minor.<sup>76</sup>

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<sup>74</sup> Indian express, 10.5.1987.

<sup>75</sup> Hindustan Times, 6.3.1985.

<sup>76</sup> Statesman, 18-20.9.1987.

Hearing that the press was on its way, the organizers of her sati brought forward the event: when the press arrived at Deorala, they were abused and man-handled by self-appointed protectors of the Sati-Sthal. Reports indicated that the local authorities view of the planned sati, yet then only action was to despatch a police jeep which had overturned on its way to the site. Following this debacle three more days elapsed before a government representative visited Deorala.<sup>77</sup>

No, attempt was made to arrest anybody, despite mounting evidence of coercion and mounting public pressure. The doctor who drugged Roop Kanwar meanwhile disappeared.<sup>78</sup>

Immediately after the immolation, the site became a popular pilgrimage spot, Roop Kanwar's father-in-law, prominent men from the village, and members of a newly formed organisation, the Sati Dharma Raksha Samiti together formed a trust along the lines of the Rani Sati Sarva Sangha Trust to run the site and collect donations. The mahajans took the responsibility of organizing stalls, selling food and accommodation

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Jethmalani, Rani. Politics and pathology of sati. *Teaching Politics*. 13(1); 1987; pp. 47-64. Identifies the groups involved in Roop Kanwar's case, i.e. the government, the Rajput Samaj and the fundamentalists. The Rajputs, though not the largest group in Rajasthan, wield enormous power as the people who have the guns, muscle and feudal authority. No government or political party would want to alienate a powerful political group in the present day situation. The Deorala incident and the sati of Roop Kanwar is seen in this context.

Harlaw, Lindsey. Perfection and devotion: Sati tradition in Rajasthan. In *sati the blessing and the curse: the burning of wives in India* / edited by John Stratton Hawley, New York, OUP, 1994, pp. 79-99.

Examines the personal ideal of sati espoused by certain Rajput women, those belonging to the erstwhile autocracy of Rajasthan, around the Udaipur area.

<sup>77</sup> Times of India, 17.9.1987.

<sup>78</sup> Joseph George, Rajasthan sleeping over Sati case. *Indian Express*, 8 March 1988.

for the pilgrims. It was reported that within three weeks the Trust itself had collected around Rs 50 lakhs.<sup>79</sup> Sati is big business. Despite demands from feminists and social reformers, this money was not impounded.

Dismayingly enough, feminists discovered through this campaign the complex relations through which issues concerning women can be used to stake claims to power. Sudesh Vaid<sup>80</sup> has shown how the 'tradition of sati and sati dharma was created in Shekhavati region (where Deorala is located) after independence, largely to regain lost authority. Some three quarters of recorded satis since 1947 have been in this region. Originally comprising small princely states and chiefdoms, the area had supported the outlawing of sati in 1846. After independence with the abolition of princely states, and the further abolition of the zamindari and jagirdari system of land relations, together with land reforms, the kshatriyas and baniyas lost some of the power and privilege they had held. Anti-land reform agitations were launched first by ex-rulers and large land-owners under a newly formed organization the Kshatriya Mahasabha, when they were successful in reinstating the Jagirdari system, small landowners followed by launching a similar agitation and forming an organization called the Bhooswami Sangh.

Both organisations invoked a chivalric 'Rajput' tradition in which men defended the Hindu tradition on battle fields by killing and being killed, while women defended it at home by killing themselves (jauhar and

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<sup>79</sup> Times of India, 17.9.1987.

<sup>80</sup> Vaid, S., Sati : an unchanging practice in a changing world, Seminar on Status of Women in Rajasthan Society, Jaipur, Dec. 12-13, 1982, CWDS, N. Delhi.

sati). Rajput identity was further fused with a militant neo-fundamentalist Hinduism, with demonstrations of tens of thousands of lathi-wielding saffron-clad Rajputs. Sati now began to be projected as exemplifying the true Rajput identity: the first post-independence sati in this area was in 1954, and at the same time an old sati-memorial, Jhunjhunu was rebuilt and expanded. Annual 'Sati melas' now began to be held.<sup>81</sup>

The parallels between the 1950s use of sati to assert an identity and the event of 1987 are fascinating. Hard on the heels of Roop Kanwar's death, a Sati Dharma Raksha Samiti was formed in Jaipur city, whose leaders were urban men, many of them professionals or businessmen from land-owning families. Together with the Deorala trust this Samiti announced that a Chunri Mahotsav would be held ten days after Roop Kanwar's death. A ritual cremation of the veil after the woman's death is, it seems, traditional in the area, but never before had it been called a Mahotsav or festival.<sup>82</sup>

At issue in 1987 was not merely a stray 'act' of Sati, horrible as it was, but a well organized effort to justify and glorify an odious institution. It was disturbing that those involved in such efforts, and in the collection of vast sums of money in the name of the Sati Dharma Raksha Samiti (SDRS), were able to paralyse the State Administration. That they even enjoyed the patronage of the State government was reflected in the

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<sup>81</sup> Sudesh Vaid, 'Politics of Widow Immolation Seminar, No. 342, Feb. 1988.

<sup>82</sup> Kishwar Madhu and Vanita Ruth, *The burning of Roop Kanwar. In Understanding Violence* Ed. Veena Poonacha, Bombay, RCWS, 1990, pp. 42-48.

Rajasthan State attorney's reference to the 'Chunri mahotsav', a part of the business of glorification of Sati, as a 'Customary religious rite'.<sup>83</sup>

Feminists in Jaipur petitioned the High court to forbid the ceremony, and the State government to prevent it from taking place. Five hundred policemen were posted along the route, clothed in civilian dress so that they would not offend the crowd.<sup>84</sup> The Mahaotsav was performed, and from an act of mourning it was transformed into a show of strength, a victory celebration. The site of the Sati was transformed into a political rallying ground: a highly charged state-of-seige atmosphere was created by sword wielding youth who surrounded the sati-sthal, and instead of devotional songs, they shouted slogans which were clearly modelled on mainstream political slogans. Madhu Kishwar and Ruth Vanita have shown how these slogans fell into 3 major groups:

1. Slogans based on leader glorification, such as Sati ho to kaisi ho? Roop Kanwar jaisi ho.
2. Victory chant such as 'Ek do teen char, Sati mata ki jai jai kar.
3. Slogans drawn from Hindu Communalist movement - desh dharam ka nata hai, sati hamari mata hai.<sup>85</sup>

Ever though several laws exist under which ideologies and profiteers of sati could have been punished, the state government took no

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<sup>83</sup> Hajni Paliwala and Indu Agnihotri, *Tradition, the Family, and the State: Politics of the Contemporary Women's Movement* In T.V. Sathiyamurthy Ed. *Region, Religion, Caste, Gender and Culture in Contemporary India*, Vol. 3, Oxford University Press, 1996.

<sup>84</sup> Hindustan Times, 17.9.1987.

<sup>85</sup> Madhu K. & Ruth Vanita, 'The Burning of Roop Kanwar, Manushi, No. 42-43, 1987.

action, largely because the issue had become one of Rajput Community identity and the question of the 'Hindu Vote'.<sup>86</sup>

Religious fundamentalism often, very successfully mobilizes women in support of their own oppression. The head priests of the major Hindu temples in such centers as Benaras and Puri, issued statements that sati represented one of the most noble elements not only of Rajput culture but of Hinduism and claimed scriptural sanction for this view. They also raised the bogey of 'Hinduism in danger' from the opponents of sati.<sup>87</sup> The pro-sati agitationists mobilized considerably sections of women in their own support, both on a casteist (Rajput) and on a religious (Hindu) platform. That is to say, they mobilized women, who would seem to be directly affected by their demands. This allowed them to claim that they represented the 'true' desires of Hindu women, and to accuse the feminist of being unrepresentative. So the feminists were placed in an anomalous position of appearing to speak in the interests of women whom they could not claim to represent and who defined their interests differently.<sup>88</sup>

The tradition versus modernity argument entered this context in such a way as to further isolate the feminists. The bogey of modernism

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<sup>86</sup> Kuldeep Kumar, A burning issue, Sunday, 11-17 Oct., 1987. Points out to 18 Sept. 1987, Jansatta editorial which glorified the practice of Sati also Hussain, Basheer, M. Sati and Hindu Fundamentalism'. Deccan Herald, 12 Nov. 1987, p. 6. The article vehemently attacks the political parties, who either by their silence or irresponsible statement do not denounce the practice of Sati. In fact, after the immolation of Roop Kanwar, the 'Chunri' ceremony was attended by prominent members of the political parties along with lakhs of people.

<sup>87</sup> Dutt, Anuradha, "When bodies are not equal how can rights be equal?" Illustrated weekly of India, 1 May 1988, pp. 26-33.

<sup>88</sup> Radha Kumar, op. cit., p. 179.

was so successfully created that the fact that sati was being used to create a 'tradition' was unrecognized, despite feminist efforts to emphasize it.

'The newly constituted patriarchal ideologies, were determined to construct women as the preserve of "truth" and "tradition", they attempted to characterize Indian feminists as hopelessly unrepresentative'.<sup>89</sup> Once again, the bogey of "religion in danger" was raised not only from expected quarters such as the Sati Dharma Raksha Samiti, the Shankracharyas or the Hindu Right, but liberal intellectuals and academics who argued against 'westernised' and 'alienated' feminists.<sup>90</sup> The feminists, on the other hand, had undertaken painstaking investigations to reveal that the 'tradition' of Sati was reinvented, and far from being a tradition worth preserving, bore all the marks of a commercialised cultural practice which did not hesitate to deploy feminist slogans, modern technologies, and the icons of popular culture to reap rich financial and political rewards.<sup>91</sup> Equally significant was the question of woman's identity: how did a woman see herself and how did others see her? Was her personhood tied to her relationships through marriage, her very right to life tied to that of her husband's life.<sup>92</sup>

In addition to clearly revealing the growing opposition to feminism, the agitation following Roop Kanwars immolation pointed to one of the

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<sup>89</sup> Vaid, Sudesh and Kumkum Sangari (1991). *Institutions, Beliefs, Ideologies: Widow Immolation in Contemporary Rajasthan*, E.P.W. 26 (27 April), 1991.

<sup>90</sup> Janaki Nair, *op. cit.*, p. 241.

<sup>91</sup> Radha Kumar, pp. 172-81.

<sup>92</sup> Sathyamurth, T.V., *op. cit.*, p. 520.



most serious challenges faced by feminists: religious fundamentalism. The Shah Bano and Roop Kanwar cases both revealed that the Indian State has responded to the religious right, always taking fundamentalists, rather than a range of liberal reformers or feminists, as the true representatives of their communities.<sup>93</sup> Leading feminist lawyer Indira Jaisingh's remark in this context is therefore strikingly apt: the personal is political, the religious is secular where women are concerned.<sup>94</sup>

Feminist groups demanded for state intervention in three ways: first, that Roop Kanwar's in-laws and the doctor who drugged her should be charged with murder; second that all those who profited financially or politically from her death should be punished, and third, that a new law should be promulgated banning both the committal and glorification of *crimes against women in the name of religion*.

The Joint Action Forum in Delhi has formulated their own comprehensive Act called the Crime Against Women and Girls in the name of Religion or Custom (Prevention and Abolition) Act, 1987, which clubs together sati, female sacrifice, witch hunting, etc. as cruelties and murder. This draft bill was never circulated to M.Ps. and so never tabled in Parliament, the government however introduced its own bill.<sup>95</sup>

Besides, the three major campaigns of the women's movement against Dowry, Rape and Sati, women's groups also raised their voice

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<sup>93</sup> Ibid., p. 241.

<sup>94</sup> Jaisingh, Indira, "Women, Religion and the Law", The Lawyers' Collective, December 1987, p. 4.

<sup>95</sup> Details of the Sati Act, see Chap. on Women and Law.

against wife battering and domestic violence, indecent representation of women in the media.

In India, there are several unique forms of female harassment which are euphemistically called 'eve teasing'. It was partly in response to the active lobbying of women's groups for a law against indecent representation of woman in print<sup>96</sup> and cinema<sup>97</sup> that a law was passed against the Indecent Representation of women in 1986.<sup>98</sup> However, the Act was deeply ambiguous about the definition of what is derogatory to women. It also encompassed all kinds of media, from postcards to statues, and gave wide-ranging powers to police officers to confiscate any materials which were deemed indecent.

Acts such as this have been welcomed only cautiously by women's groups. While on the one hand it recognised that there is abundant material in plays, books, advertisements and movies which is hostile and offensive to women, and the availability of such incitements to harassment is only growing, there is on the other hand the recognition that such sweeping powers vested in the state are often abused. More importantly, *the law blurs the distinction between 'indecent' and 'obscene'.*<sup>99</sup>

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<sup>96</sup> Pathak, Ila and Amin, Amina, Media and Sex roles, Ahmedabad, Ahmedabad Women's Action Group examines the portrayal of women with sp. reference to commercial advertisements and observes that women are used predominantly as sex objects and as traditional stereotypes.

Ravneet Kaur. How visual and Press media promote sexual exploitation of women. Asian Regional Conference on Exploitation of Woman and Children, Its Causes and Effects, New Delhi, Nov. 17-19, 1988, pp. 157-180.

<sup>97</sup> Deshpande, Anjali, Celluloid insult to womanhood. Mainstream. 19 (46); 6 June 1981, p. 5. Sivadas Akhila and Gupta, Shubhra. Cinema in the living room workshop on violence against Women, New Delhi, March 27-28, 1995.

<sup>98</sup> Gandhi, Nandita. The Indecent Representation of women (Protection) Act (1986). Indian Journal of Social Work No. 50, July 1989, pp 377-85.

<sup>99</sup> Gandhi & Shah. Issues at Stake, p. 226.

Women's groups have for long been demanding a review of the liberties the film industry has taken in depicting, and valorising, acts of violence against women and the depiction of women as sex-objects, however, instead of suggesting censorship and repression the challenge for Indian feminists once more is to reiterate their demand for a review of pornographic material and to protest against violence against women in Indian-popular culture in the name of women's right to live in a society free of fear and violence.<sup>100</sup> The unabashed, exploitative use of women's bodies for consumer attention by different advertisers is a rapidly developing market phenomenon. Colourful, eye catching advertisements of women hawking a variety of products from tractors to cigarettes, or big overpowering cutouts of film actresses in suggestive poses and flimsy tinsel clothes alongside film posters greet the public daily. Women's groups' systematic actions of media watch committees, tearing posters, pulling down hoarding and demonstrations before cinema halls has yielded tangible and immediate results. But it has not been as easy to change the advertisement system which continues to churn out its offending, sexist and manipulative material.<sup>101</sup> Legally, women's groups can take recourse to an ambiguous law on obscenity, the cinematography Act, or make appeals to the Censor Board. It was in this context, that many women's organisations lobbied for a separate law. In August 1986, both houses of Parliament passed the 'Indecent Representation of Women (Protection) Bill'.<sup>102</sup>

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<sup>100</sup> Janaki Nair, *Women and Law in Colonial India*, p. 244.

<sup>101</sup> Mojumdar, Modhumita. *Women and Media*, Mainstream Annual, 1981; pp. 121-124. Also Sinha, Pushpa, *Role of media and violence against women*. In *women and violence* / Edited by Niroj Sinha, Vikas, N. Delhi, pp. 106-115.

<sup>102</sup> For details of the Act, see Chapter on Women and Law.

Ambivalent feelings have greeted this law. The editor of Baija, the Marathi women's journal and member of Sampark Samiti felt that "we need some laws and censorship today because there is a proliferation of obscene plays and posters which our agitations cannot contain. The argument against the law is that if the state can restrict the dirty stuff, it may also ban progressive plays, etc. If this happens then we have to demonstrate and fight against the state rather oppose such laws totally".<sup>103</sup>

The editors of Manushi described the law as an "amateurish and shabby document" which has such a "ridiculously vague and all encompassing definition of what is indecent .....<sup>104</sup> it clearly shows that the government has not the slightest intention of taking this law seriously". Instead the arbitrary powers given by the law to officers might lead to its abuse. It could further nullify individual rights, curtail the freedom of the press and be used to harass and extract bribes.<sup>105</sup>

What perhaps upset women's groups the most was that, not only was the problem of definition avoided but along with the vagueness, wide-ranging powers were given to gazetted officers to enter, and seize material they may consider indecent without being subject to any legal proceedings or prosecution, even if the court were later to decide that the seized material is not indecent, the damage would already be done. Manushi draws a disturbing parallel with the Prevention of Terrorism and

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<sup>103</sup> Gandhi Shah, p. 226.

<sup>104</sup> Ibid. For details of the Act and the definition of "indecent".

<sup>105</sup> Manushi No. 37, 1986, N. Delhi.

Disruptive Activities Act which has hardly proved effective in curbing terrorism but has been increasingly used to harass particular people.<sup>106</sup>

At the same time, the government is unconcerned about the proliferating pornographic and vulgar material, which is sold openly on the streets and in shops. Women's Groups like Saheli (New Delhi) continue their campaign against obscene posters, and pornographic Literature. In Allahabad too Chetna, a registered NGO working towards Gender justice and women's empowerment led a successful campaign against two pornographic magazines namely 'Fun and Fantasy'. As a consequence of this campaign the publication of the two magazines from Allahabad ceased.

Far more dangerous than the overtly obscene advertisements are the sexual stereotypes that are found in different media.<sup>107</sup> The Indian version of sex stereotyping would have all women behaving like the mythological Sita or Savitri, docile, submissive, sacrificing sentimental, superstitious and incapable of rational action, their primary duty being wives, companions and devoted mothers. Films are the largest disseminators of stereotyped images. Women's groups have circulated pamphlets analysing sexist, anti-women films at Cinema halls. Forum Against Oppression of Women, Stree Uvach, Bombay, demonstrated, Saheli Portrayal of women in the Media Committee, N. Delhi researched

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<sup>106</sup> Ibid.

<sup>107</sup> Bambawale, Usha. Women's image as projected on screen. Mainstream 32 (5), 26 Feb. 1994, pp. 17-20. Also Pathak, Ila and Amin, Amina. Media and sex roles. Ahmedabad. Ahmedabad Women's Action Group. Deshpande, Anjali. Celluloid insult to womenhood. Mainstream, 19 (40), 6 June 1981.

television and theatre programmes, AWAG Ahmedabad, FAOW, Bombay and Vimochana, Bangalore hosted "alternative" film festivals. The women and media group Bombay held a film workshop to critically look at some progressive, women oriented films in 1985. Another notable event was the 1986 Hyderabad Film Festival which had a special discussion on the themes of "The politics of personal struggle and film", "films for consciousness raising" and "relationship between films and the women movement".<sup>108</sup>

As with all oppressed or discriminated people who want to be heard the women's movement gave rise to an alternative media, for example women's magazines such as *Baija* (Marathi), *Manushi* (English), *Sangharsh*, *Kruthi* (Bangalore), *Aurat Ki Awaz* and *Stree Sangharsh* (Hindi), *Nari Mukti* (Gujarati). From the academia came *Samya Shakti* and the Indian Association of Women's Studies bulletin as well as the SNDT Research Units Newsletter. It was this alternative media which challenged traditional roles and ideas related to women and fostered a more humane relationship between men and women to struggle for women's rights and equality. Thanks to the efforts of the women's movement, more individual women and organisations are interested in what they call a "women's culture" which encourages the development of new songs, theatre, video films, audio cassettes called 'Todo Bandhan' and 'Buland Irade' (Jagori, New Delhi), Plays like 'Om Swaha' (Stree Sangharsh, N. Delhi), *Mulgi Jhali Ho* (Stree Mukti Sangathan, Bombay) have a wide reach.

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<sup>108</sup> Sivadas, Akhila and Gupta, Shubhra, *Cinema in the living room, Workshop on violence against women*, N. Delhi.

The campaign against violence launched by the women's movement in the eighties has been militant, it has taken the form of angry street demonstrations against particular incidents of atrocities and against offenders to highlight issue of rape and other forms of violence on women. The collective use of forms of political protest like street demonstrations, anti-state slogans and banners, dharnas etc. transformed these "Social" issues into "political" ones, the "private" into the "public" to hold the state and society responsible for atrocities on women.

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## **CHAPTER 3**

### **THE WOMEN'S MOVEMENT AND LEGAL REFORMS**



## THE WOMEN'S MOVEMENT AND LEGAL REFORMS

The nineteenth century has for long been considered the century of social reform<sup>1</sup>, and is most well remembered for reforms that affected sections of Indian women. It was in the first quarter of the nineteenth century that colonial authorities were emboldened to undertake legislative measures which would form the basis of a whole new legal system. This new outlook sprang from those social and economic changes which accompanied the Industrial Revolution. As the vast expansion of the Lancashire cotton industry reversed Britain's balance of trade with India, so too did the self-confidence of the new era erase the old sympathetic view of Indian civilization. After 1800 the individualist competitive society of Industrial Britain was increasingly looked upon as the acme of an advanced and progressive civilisation. India, a barbarous and superstitious land, was consigned to the lowest scale of civilization. Its only hope lay in complete reformation.<sup>2</sup>

At the heart of this reforming enthusiasm lay the doctrine of Liberalism. The first and clearest expression of the liberal attitude to India is found in James Mill's, *The History of British India*.<sup>3</sup> James Mill never set foot in India nor, unlike the Orientalists<sup>4</sup>, did he study a single Indian

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<sup>1</sup> Charles H. Heimsath, *Indian Nationalism and Hindu Social Reform*, Princeton University Press, 1964, p. 9.

<sup>2</sup> Thomas R. Metcalf, *The Aftermath of Revolt-India, 1857-1870*. Manohar, 1990, p. 8.

<sup>3</sup> James Mill, *The History of British India* (London, 1820).

<sup>4</sup> Orientalists were British scholars who mastered the classical Indian languages and translated what were identified as key texts. Nathaniel Halhed, William Jones, H.T. Colebrook Strove to counter the most pervasive British conception about pre-British

Language : nevertheless, he composed a five-volume History of India, which as Guha has pointed out, assimilated Indian History to the history of Great Britain: "Indian History ... would henceforth be used as a comprehensive measure of difference between the peoples of these two countries".<sup>5</sup> In contrast to Orientalist accounts which had charted a decline in Indian civilization from great heights, Mill suggested that Indian civilization was inherently flawed and only worthy of thorough reform. In fact, Mill insisted that "the most effective step which can be taken by any government to diminish the vices of the people is to take away from the laws every imperfection."<sup>6</sup> The emerging policy also sprung from the optimism characteristic of utilitarianism in England<sup>7</sup>, the empire could be made more permanent if it successfully seized the unlimited opportunities for reform in India.<sup>8</sup> Mill's assessment of Indian Society was in part based on the position of its women. In his work, the position of women was taken as emblematic of the general state of that society. According to Mill, Hindu women were in a state of dependence more strict and humiliating than which is ordained for the weaker sex .... They are held in extreme degradation, excluded from the sacred books, deprived of education, and of a share in the parental property.<sup>9</sup>

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(Mughal) India, David Kopf *British Orientalism and the Bengal Renaissance, 1773-1835*. Berkeley, Univ. of California Press, 1969.

<sup>5</sup> Ranajit Guha, "Dominance without Hegemony and its Historiography" in *Subaltern Studies VI*, ed. Ranajit Guha, p. 211. Oxford University Press, N. Delhi, 1994.

<sup>6</sup> James Mill, *The History of British India* (London, 1820), pp. 166-167.

<sup>7</sup> Eric Stokes, *The English Utilitarians and India*, Oxford University Press, Delhi, 1982. For details of Utilitarian Philosophy.

<sup>8</sup> Francis Hutchins, *The Illusion of Permanence*. Princeton Univ. Press, 1967.

<sup>9</sup> James Mill, *op. cit.*, pp. 312-313.

The bulk of the early production of British writers were aimed at highlighting the peculiarities of Hindu tradition and especially the "barbarities" to which the Indian woman was subject. A strategy which was followed by nearly all imperial powers in the nineteenth century was the denigration of politically and economically subjugated cultures by foregrounding the position of women in those societies compared with the more obvious freedoms of the European woman. This was done by singling out the most extraordinary of cultural practices for attention, which were then taken as emblematic of the culture as a whole, and worthy of reform.<sup>10</sup>

The focussed attacks of the Evangelicals<sup>11</sup>, Utilitarians<sup>12</sup> and Anglicists<sup>13</sup> in India were on those practices which were indicative of moral depravity. To quote Trevelyan, "The Government should confine itself to the maintenance of religious neutrality and the suppression of such outward manifestation of the Hindu system as were repugnant to common morality and decency".<sup>14</sup>

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<sup>10</sup> e.g. western missionaries were horrified when they encountered the Chinese practice of curtailing female mobility through foot binding. Similarly, the practices of clitoridectomy in the Arab World and the North African region was the focus of much colonial concern.

<sup>11</sup> Evangelicals were missionaries who asserted that God had laid upon Britain the solemn duty of evangelizing India. They demanded govt. patronage of Christian Education and vigorous warfare upon the abuses associated with the Hindu religion. The important evangelists were, the Scottish missionary Alexander Duff. He wrote 'The Indian Rebellion' (London, 1858).

<sup>12</sup> Eric Stokes, 'The English Utilitarians and India; Oxford University Press, 1959. James Mill, J.S. Mill, Bentham, Adam Smith were the important utilitarian thinkers who determined Br. Colonial Policy in India.

<sup>13</sup> T.B. Macaulay, Sir Charles Edward Trevelyan were important anglicists.

<sup>14</sup> Evidence to the House of Commons, 23 June 1853 cited in T.R. Metcalf, 'The Aftermath of Revolt India, 1857-1870, Manohar, 1990.

The colonial government's initiatives for and efficacy of, legislation for social change in the nineteenth century resulted in four principle regulations of the century relating to Sati abolition, widow remarriage, age of consent, and female infanticide.

### **The Abolition of Sati :**

For a long time, the British refused to legislate on Sati fearful of social revolt.<sup>15</sup> Yet this was at odds with its self-proclaimed role as the force that introduced "Civilization" to India.<sup>16</sup> Therefore, one early compromise was to make an elaborate distinction between 'good' (Scripturally sanctioned) and 'bad Sati'. The first recorded enquiry about the practice took place in 1789. In exactly forty years the practice was outlawed.<sup>17</sup>

The government before enforcing a ban on Sati attempted to find out whether there was a scriptural basis for the practice. Pandit Ghanshyam Surmono, who was called upon to comment on the issue, did declare that widow immolation has scriptural sanction but also mentioned that it was a voluntary act intended to ensure the long after life of the

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<sup>15</sup> "Mountstuart Elphinstone remarked when the suppression of Sati was first proposed 'If we succeed we save 100 to 1000 victims from voluntary immolation. If we fail we involve sixty millions in all the horrors of war and revolution ... and we shut out every hope of that slow but certain improvement that is now going on among the natives". *Elphinstone to Marriot*, 9 September 1819. Cited in Kenneth Ballhatchet, *Social Policy and Social Change in Western India 1817-1830* (London 1957), pp. 279-80.

<sup>16</sup> Liberals like James Mill, J.S. Mill, Charles Trevelyan were of the view that Britain had been given dominion over India not to subdue that nation, but to raise it in the scale of civilization. To quote Charles Trevelyan "The empire we should construct was the imperishable empire of our arts and our morals, our literature and our laws". Charles Trevelyan, *On the Education of the People of India*, London, 1838, p. 536.

<sup>17</sup> Lata Mani, "The Production of an Official Discourse on Sati in the Nineteenth Century Bengal". *Economic and Political Weekly*, 21.17 (April 1986).

couple. He further specified the conditions under which it was prohibited i.e. when a woman was pregnant, intoxicated, less than 16 or coerced.<sup>18</sup>

The British in India began an unprecedented effort at collating scriptural and empirical evidence which would form the basis for eventual abolition. It is interesting to note that, in the early nineteenth century, the British obsession with widow immolation was boundless, producing thousands of Parliamentary Papers on the subject while the mortality of millions from disease and starvation, often as a result of British policy itself, received little mention.<sup>19</sup> the campaign for the suppression of Sati evoked widespread sympathy and was supported by men like Raja Ram Mohan Roy.

The desirability of legislative intervention to abolish the practice altogether was never in doubt, but became feasible only when British rule in India was more assured. Lord William Bentinck in December 1829 prohibited Sati in the Bengal Presidency. He was, he said moved solely by a desire to benefit the Hindus. "I know nothing so important to the improvement of their future condition as the establishment of a purer morality whatever their belief ... The first step to this better understanding will be dissociation of religious belief and practice from blood and murder".<sup>20</sup>

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<sup>18</sup> Ibid.

<sup>19</sup> C.A. Bayly, "From Ritual to Ceremony: Death Ritual and Society in Hindu North India since 1600" in *Mirrors of Mortality: Studies in Social History of Death* ed. Joachim Whaley, New York: St. Martins Press, 1981, p. 174. Anand Yang, "Whose Sati? Widow burning in early Nineteenth century India" *Journal of Women's History* 1.2.1990, pp. 8-33 esp. p. 18. Cited in Nair Janaki *Women and Law in Colonial India*, op. cit.

<sup>20</sup> Minute of 8 November 1829 quoted in D.C. Boulger, *Lord William Bentinck*, p. 111.

### **Widowhood :**

The debate over female volition in the practice of widow immolation brought to the foreground the deplorable position of upper caste widows in Indian society, to whom even death seems a preferable choice. The prohibition against the remarriage of widows was strictly observed only amongst upper caste Hindus.

In the early 1830s, the Law Commission under Thomas Macaulay, which had undertaken the task of framing a penal code, discovered a link between the prevailing high rate of infanticide and the prohibition against the remarriage of widows. The Sadr Nizamat Adalat Court in 1837 in the North Western Provinces informed the Law Commission that child murder was a prevalent crime and recommended that "the endeavour of a woman to conceal the birth of her dead child by secretly disposing of the body" should be made illegal.<sup>21</sup>

The Indian Law Commission sought opinions of the Sadr Courts of Calcutta, Allahabad, Madras and Bombay regarding the proposed law permitting widows to remarry. The Calcutta Sadr Court immediately replied saying that "it was distinctly clear by the Shastras that the remarriage of a widow involved guilt and disgrace on earth and exclusion from heaven".<sup>22</sup> As a result, the Law Commission in its drafting bowed to the opinions of the regional courts, and no such legislation was introduced.

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<sup>21</sup> Law Commission of India, Eighty First Report on Hindu Widows Remarriage Act of 1856, Appendix, p. 15.

<sup>22</sup> Ibid., p. 16.

It took nearly 18 years before the question of a legislative challenge to the customary status of widows was raised again, this time in a campaign inaugurated by Ishwar Chandra Vidyasagar. Vidyasagar collaborated with the Brahmo Samaj and with the Tattvabodhini Sabha to initiate several written pleas for the reform of the institution of marriage, including the abolition of Kulin polygamy.<sup>23</sup>

Vidyasagar saw the passage of a bill that legalised the marriage of widows including those of brides who had never left the natal home or consummated their marriage, as a logical second step to the ban on widow immolation, which saved women from the pyre but condemned them to a living death. The Hindu Widows Remarriage Act XV of 1856 was passed permitting Hindu widows to remarry. The majority of orthodox Hindus, however, clung to the traditional view that widows should remain unmarried.

The Remarriage Act did not change the status of widows. Frequently blamed for the husband's death, the high-caste widow was required to relinquish her jewellery and subsist on simple food. Young widows were preyed upon by men who would make them their mistresses or carry them away to urban brothels.<sup>24</sup>

From the latter half of the nineteenth century a new voice was beginning to be heard, that of the educated Indian woman, which sometimes echoed the male discourse on womanhood but also quite often

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<sup>23</sup> Charles Heimsath, *Indian Nationalism and Hindu Social Reform*, Princeton University Press, 1964, p. 79.

<sup>24</sup> Geraldine Forbes, *'Women in Modern India'*. Cambridge University Press, 1996, p. 22.

offered trenchant critiques. Tarabai Shinde (1850-1910) and Pandita Ramabai (1858-1922), both from Maharashtra, were among those whose writings displayed an acute awareness of the institution of Patriarchy and the subordination of women.

Tarabai Shinde's incisive analysis in *Stri Purush Tulana* was prompted by the tragic case of a young Brahmin widow, Vijaylakhmi, who murdered her illegitimate child in 1881, and was condemned to be hanged for her crime by the sessions Judge.<sup>25</sup>

### **The Age of Consent Controversy :**

A statute that declared rape an offence punishable with death when the girl was below eight years and imprisonment in other cases, had been part of the criminal justice code administered in the towns of Calcutta, Madras and Bombay from as early as 1828.<sup>26</sup> Among Indians themselves, a concern for fixing the minimum age of marriage of men and women by law was voiced as early as the mid-nineteenth century by Ishwar Chandra Vidyasagar and Keshab Chandra Sen.<sup>27</sup> Vidyasagar himself attacked the institution of child marriage for causing misery and blamed the practice on "outmoded Shastras".<sup>28</sup>

<sup>25</sup> Kumar, Radha, op. cit., p. 32.

<sup>26</sup> Indian Women: Marriage and Social Status Reprint of the Report of the Age of Consent Committee, 1928-29. (Delhi: Usha Publications, 1984, p. 9.).

<sup>27</sup> Charles H. Heimsath, *Indian Nationalism and Hindu Social Reform*, Princeton University Press, 1964, p. 161. Heimsath, "The Indian Penal Code incorporated an early age of consent Act, passed without much opposition in 1860 at the urging of Vidyasagar, which established ten as the age of girl below which sexual intercourse with her was regarded as rape.

<sup>28</sup> Geraldine Forbes, "Women and Modernity. The Issue of Child Marriages in India", *Women Studies International quarterly*, 1979, pp. 407-19 esp. p. 408.



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<sup>28</sup> Geraldine Forbes, "Women and Modernity. The Issue of Child Marriages in India", *Women Studies International quarterly*, 1979, pp. 407-19 esp. p. 408.

The scene of action for the debate on age of consent shifted from Bengal to Maharashtra in the late nineteenth century, where it was taken up by the journalist and publicist Behramji Malabari. His newspaper, *Indian Spectator*, was a major organ for the spread of social reform ideas in the 1880s. Early in his career Malabari began issuing tracts and delivering lectures on reform. His "Notes" on "Infant Marriage in India", and "Enforced widowhood" were published on August 15, 1884. These were based on statistics generated by the census, and was an argument for regulating the age of consent.<sup>29</sup>

Two cases of the period drew national attention and stressed the need for urgent reform.<sup>30</sup> These were the *Phulmoni Das Vs. Hari Mohan Maity* and the other *Rakhmabai Dadaji Bhikaji*.

The *Rakhmabai* case also polarised the views of the elite, *Rakhmabai's* plight was most useful in supporting the plea for raising the age of consent but also aided those opposed to social transformation. B.G. Tilak was one of the most vociferous opponents of reform of the Indian tradition which was, in its unreformed state, seen as the bulwark against imperialism. The *Rakhmabai* case revealed that the colonial govt. was only too willing to step into the holy sphere of the family in order to reinforce patriarchal arrangements. The govt. in 1877 passed Act XV

<sup>29</sup> Heimsath *Indian Nationalism*, p. 158. Forbes, "Women and Modernity", p. 409.

<sup>30</sup> *Phulmoni Das* (1890) at the age of ten died as a result of injuries sustained during sexual intercourse with her 35 years old husband, Hari Mohan Maity.

*Rakhmabai* case, in which *Rakhmabai's* refused to live with her uneducated, consumptive and unemployed husband *Dadaji Bhikaji*.

For details of the cases see Janaki Nair, *op. cit.* and pp. 71-79.

Radha Kumar, *op. cit.*, pp. 26-30

recognising the right of the husband to his conjugal privileges and provided for the imprisonment of recalcitrant wives. Rakhmabai was thus sentenced under this Act.<sup>31</sup>

The Age of Consent Act 1891 which raised the age for girls to 12 while leaving the arrangement and performance of marriage unrestricted, was an indication of the compromises that had been affected by opponents of the Bill. In March 1891, both the Indian Penal Code and the Criminal Procedure Code were amended to raise the age of consent to 12 for married and unmarried girls; violation of this act was punishable with up to ten years in prison or transportation for life. However, since it was consummation rather than marriage that was prohibited, prosecution under the act was difficult if not impossible.<sup>32</sup>

Although it was long believed that women were practically absent in the discussions on the Age of Consent during the 1880s and 1890s, fresh scholarship has shown that this was not the case. Apart from the better known instances of Ramabai and Rakhmabai several other women participated in the debate.<sup>33</sup> In the first decades of the twentieth century not only were women voicing critiques of legislation, they were demanding new rights and protections. By the 1920s and the 1930s they shed their

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<sup>31</sup> Dagmer Engels suggests that Rakhmabai's release from her marriage was obtained through the intervention of Queen Victoria in "The Limits of Gender Ideology. Bengali women, the Colonial State and the Private Sphere, 1890-1930. *Women's Studies International Form*, p. 429. Cited in Janaki Nair, *op. cit.*, p. 75.

<sup>32</sup> Janaki Nair, *op. cit.*, p. 75.

<sup>33</sup> McGinn, Padma Anagol (1992), "The Age of Consent Act (1891) Reconsidered: Women's Perspectives and Participation in the Child Marriage Controversy in India", *South Asia Research* 12.2.

timidity and became vociferous participants in the debate leading up to and after the passage of the Child Marriage Restraint Act of 1929.<sup>34</sup>

A bill to raise the age of consent for girls and boys to 14 and 18 respectively was introduced in the legislative assembly by Har Bilas Sarda in 1927. Women had sought support for various legislative measures between 1922 and 1927, but the Sarda bill infused their campaign with new vigour. The All India Women's Conference (AIWC) member Maharani Chimanbhai said "On the reform of our marriage system will, I believe rest the success or otherwise of our educational programme."<sup>35</sup>

The Sarda Act's greatest lesson was "to show the women who supported it how powerless they were when it came to actually effecting social change through legislation."<sup>36</sup> There were few prosecutions under the act despite the fact that the AIWC constantly demanded amendments to make the prosecution of offenders easier, and urged the formation of vigilance committees. An editorial in the Indian Social Reformer remarked rather angrily in 1936 that there was a "veritable stampede to register (child) marriages between Sept. 1929, when the Bill was passed and April 1930, when it became enforceable."<sup>37</sup>

What ever the limits of their actions on social reforms, the incipient women's movement was quick to learn one important lesson. That, the

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<sup>34</sup> Janaki Nair, op. cit., p. 79.

<sup>35</sup> Aparna Basu and Bharati Ray, *Women's struggle : A history of the All India Women's Conference, 1927-1990* (Delhi : Manohar, 1990), pp. 42-43.

<sup>36</sup> Ibid., p. 46.

<sup>37</sup> Indian Social Reformer, Aug. 1936.

language of rights for women could only be legitimately deployed if it was linked to a larger question of national independence and the formation of the nation-state.<sup>38</sup>

### **Female Infanticide :**

The law which banned female infanticide is probably a unique example of legislation which was short lived because of its effectiveness. Compared with the relatively long gestation periods of most social legislation, and their indifferent implementation, there was an extraordinary brisk quality to the British initiatives against female infanticide, especially, in parts of north and west India. The Special Act of 1870 was considered so effective in curbing the crime of female infanticide in the N.W. Provinces that it was withdrawn in 1906.<sup>39</sup>

### **The Indian Constitution and women's Rights :**

"The Indian Constitution coolly contemplates a male dominated society ... it does not see patriarchy as problematic, it perceives it as natural.<sup>40</sup> Post-independence debates over the bills that concerned women, and arguments and judgements reveal that the women's question was hardly "resolved" even in a limited sense in the colonial period.

After independence, entrenched patriarchal interests were extremely hostile to translating equality of women before law into a constitutional reality. Thus, the constituent assembly, which assured

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<sup>38</sup> Janaki Nair, op. cit., p. 84.

<sup>39</sup> Lalitha Panigrahi, *British Social Policy and Female Infanticide in India* (New Delhi), Munshiram Manoharlal, 1972, p. xii.

<sup>40</sup> Baxi, Upendra, *Towards a Sociology of Law*, Satvahan, Delhi, 1986, p. 20.

women that they would not be discriminated against on the grounds of sex, nevertheless provided exactly such a possibility in the name of religious freedom, which allowed for the freedom of each religion to retain its personal laws. Although the freedom of religion is strictly subject to the fundamental rights enlisted in Part III of the Constitution, and also provides for social reform, it was seen as setting a limit on individual freedoms. B.R. Ambedkar as a framer of the constitution protested in vain against the retention of personal laws. The religious conceptions of this country are so vast that they cover every aspect of life from birth to death. There is nothing that is not religious and if personal law is to be saved, I am sure about it, in social matters we shall come to a standstill ... After all what are we having this liberty for? We are having this liberty to reform our social system which is so full of inequalities, discriminations and other things which conflict with our fundamental rights.<sup>41</sup>

Women in Parliament notably Rajkumari Amrit Kaur protested vociferously against the provisions in Article 25 : ... Everyone is aware how many evil practices which one would like to abolish, are carried on in the name of religion, e.g. purdah, polygamy, caste disabilities, animal sacrifice, dedication of girls to temples, to mention a few.<sup>42</sup>

The debate on the Hindu Code Bill<sup>43</sup> finally resulted in changes in the Hindu Personal Law which were encompassed in four acts. The Hindu

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<sup>41</sup> P.C. Chatterjee, *Secular Values for India* (New Delhi, Lola Chatterji, 1984, p. 13.

<sup>42</sup> Janaki Nair, *op. cit.*, p. 219.

<sup>43</sup> "The History of the discussion on women's rights both in the Constituent Assembly and in the Central Legislature over the Hindu Code Bill in the period immediately after independence, indicates attitudes towards women's equality vary sharply. As long as the discussion was on abstract principles, as was the case during the

Marriage Act of 1955.<sup>44</sup> The Hindu Succession Act of 1956.<sup>45</sup> The Hindu Adoption and Maintenance Act, 1956<sup>46</sup> and the Hindu Minority and Guardianship Act of 1956.<sup>47</sup>

### **THE WOMEN'S MOVEMENT AND ENACTMENTS ON VIOLENCE AGAINST WOMEN – 1975-85 :**

In post-independent India, the debate on women and the law started in the seventies. Many activities to enhance women's status in India have been prompted, ideologically and materially, by international feminism.

In 1967, the United Nations General Assembly adopted the Declaration on the Elimination of Discrimination Against Women.<sup>48</sup> It followed up the declaration with repeated requests to member states to submit reports on the states of women in their countries. In response the

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debate on Fundamental Rights in the Constituent Assembly, there was no dissentient voice to challenge or to even provoke a discussion on this historic decision, when it came to applying the same principles on established preserves of traditional male privileges, such as the right to property, the reactions of the same body was very different". CSWI Report, op. cit., p. 8.

<sup>44</sup> The Hindu Marriage Act of 1955 laid down conditions for a Hindu Marriage specifically making bigamy punishable, and fixing the age of marriage at 18 and 15 respectively.

<sup>45</sup> The Hindu Succession Act of 1956 codified the multiplicity of laws concerning the property rights of women.

<sup>46</sup> The Hindu Adoption and Maintenance Act 1956 entitled a female Hindu who is single to adopt a child herself and in her own right. It also made provisions for the maintenance of an estranged wife and from an illegitimate child to claim support from the father during his life time.

<sup>47</sup> The Hindu Minority and Guardianship Act of 1956 recognised the father as the natural guardian of legitimate children in respect of their person and property while the mother was the guardian of the illegitimate child. This was a clear indication of the inability to question the patriarchal arrangement as anything but natural.

<sup>48</sup> Document 36 General Assembly Resolution adopting the Declaration on the Elimination of Discrimination Against Women. The United Nations and The Advancement of Women, 1945-1996, Department of Public Information, United Nations, New York.

Govt. of India constituted the committee on the Status of Women (CSWI) in Sept. 1971.<sup>49</sup>

The release in May 1975, of the Committee's Report, Towards Equality<sup>50</sup>, created an effect similar to that experienced in the United States in 1961 with the creation of the President's Commission<sup>51</sup> that something must be done to help women achieve full equality in American Society; so, in India, Towards Equality sparked immediate demands for govt. action. The data it compiled on women's inferior position in religions and family life, in health care and in law, and with regard to economic, educational and political opportunity served as a jolt to the consciousness of many educated and politicised Indians both women and men, and helped spur their activation in a new direction.<sup>52</sup>

The Committee On The Status of Women In India report called for vigorous governmental action to improve the status of women. Significantly, the authors of the report located their advocacy of equality for women not only within the moral scheme of "Social Justice" but squarely within the developmental needs of the nation as a whole. Women's equality, they argued, is "a basic precondition for social,

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<sup>49</sup> Towards Equality, Report of the committee on the status of women in India, Ministry of Edu. and Social Welfare, Dec. 1974.

<sup>50</sup> In 'Towards Equality', the debate was far more sharp, focussing on the gender bias in the law and making society aware of the oppression of women within the home and how widespread domestic violence is, resulting in several impt. amendments to existing as well as fresh legislations. National Perspective Plan for Women, 1988-2000 A.D. Ministry of Women & Child, p. 135.

<sup>51</sup> Jo Freeman, The Politics of Women's Liberation, David McKay, New York, 1975, p. 52.

<sup>52</sup> For details, CSWI Report, op. cit.



Economic and political development of the nation and thus should be a governmental priority.<sup>53</sup>

'Towards Equality's' demographic survey brought out quite clearly the adverse sex ratio vis-a-vis women. The demographic survey also reported that despite the Child Marriage Restraint Act which designated fifteen years as the minimum legal age for marriage, the marriage of young girls was still common.<sup>54</sup> The 1961 census revealed that in more than one third of the districts in India, the average age at marriage was below fifteen.<sup>55</sup> As recently as 1986, the Health Minister of Uttar Pradesh found that the state contained villages in which all girls over the age of 8 were married; the girls' parents explained that the dowry expected at the marriage of an eight years old was only five hundred rupees, as compared to twenty thousand rupees expected after puberty.<sup>56</sup>

Thus, despite the Sarda Act, child marriage in rural India was the ground reality. Therefore the need for regulating dowry and more stringent measures for restraining child marriages was being felt. Violence within

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<sup>53</sup> Ibid., p. 8.

<sup>54</sup> Also known as the Sarda Act, the Child Marriage Restraint Act was passed in 1929 with a minimum age of marriage for males of 18 years and for females of 14 years, the latter was amended in 1949 to 15 years. *Towards Equality*, op. cit., p. 111.

In 1978, the Act was further amended, raising the minimum legal age at marriage to 18 years for girls and 21 for boys. *Women in India*, Country Paper, p. 14.

<sup>55</sup> In rural areas the mean age at marriage for males is higher than that of females by 4.9 years. The difference is even higher in the urban areas, namely 5.1 years, though the rural-urban differences are small. A detailed analysis of the estimates of the mean age at marriage in different districts of India based on marital status date in the 1961 census reveals that in more than one-third of the total districts in India in 1961, the average age at marriage of females was below 15. Most of the districts are in the States of Madhya Pradesh, Bihar, Rajasthan and Uttar Pradesh. Table 16. See annexure. *CSW*, p. 23.

<sup>56</sup> "Dowry Main Cause of Early Marriage in U.P.", *Indian Express*, 9 May 1986.

marriage, including that which stems from exorbitant demands for dowry payments, became an important issue with the women's movement.

During its tours of all the states, the members of CSWI were informed of only one case that was pending before the court in Kerala, in which the father had filed the complaint only because of ill-treatment meted out to his daughter.<sup>57</sup>

The committee members stated categorically, we are compelled to record our findings that the Dowry Prohibition Act 1961<sup>58</sup>, passed with the ostensible purpose of curbing this evil, if not of eradicating it, has signally failed to achieve its purpose.<sup>59</sup>

The major cause for the failure of the Dowry Prohibition Act, 1961 is that an infringement of the provisions of the Act is not made a cognizable offence. That the offences under the Act should be made cognizable was in fact suggested during the debate in Lok Sabha.<sup>60</sup> Thus, the need to plug major loopholes in the legislation became one of the major concerns of the women's movement during the period under study.

In defiance of the Dowry Prohibition Act of 1961, the custom of Dowry had percolated down the social scale and communities which had hitherto practiced the custom of bride price were now resorting to dowry.<sup>61</sup> At the other level all the violence faced by women in their husband's home

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<sup>57</sup> CSWI Report, op. cit., p. 115.

<sup>58</sup> The Dowry Prohibition Act, 1961, Eastern Book, 1985, Lucknow.

<sup>59</sup> CSWI Report, op. cit., p. 115.

<sup>60</sup> Smt. Parvati Krishnan, 36 Lok Sabha Debates, Col. 3703 (1969).

<sup>61</sup> For details see CSWI Report, op. cit., p. 118.

was being attributed to dowry and the term 'dowry death' became synonymous with suicides and wife murders.

Most cities in India witnessed public protests against dowry deaths which received wide media coverage. Women's organisations were in the forefront to protest against dowry death or bride burning, a unique form of violence experienced by Indian Women, more specifically by Hindu women.<sup>62</sup>

The Law Commission of India under the chairmanship of Mr. K.K. Mathew submitted its report in August 1983 on 'Dowry Deaths and Law Reform'<sup>63</sup> :

The Law Commission Report stated : 'This is the area of violence against women leading very often to their death at the hands of in-laws and/or husbands or to their being driven to committing suicide because the girl's natal family is unable to meet the continued demand for Dowry'.<sup>64</sup>

The Law Commission Report on Dowry Deaths has comprehensively made its recommendation - not only how the substantive law of dowry should be changed, but more important, what changes are necessary in the Evidence Act which will facilitate the prosecutions against

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<sup>62</sup> In 1982 a group of women activists in New Delhi set up Saheli. Saheli volunteers began to keep records on the deaths of women and whenever possible intervened with the police to demand more thorough examination. Saheli Newsletter, 1, No. 2 (June 1984); Saheli Report (Nov. 25, 1983). The other women's orgs. working on the issue of Dowry were 'Dahej Virodhi Chetna Manch, Mahila Dakshita Samiti, Nari Raksha Samiti etc. (All Delhi based) for details see Chapter on Violence.

<sup>63</sup> Lolika Sarkar, Law Commission of India, Centre for Women's Development Studies, New Delhi, 1988.

<sup>64</sup> Ibid., p. 78.

persons who have committed a murder in cold blood (known as Dowry Death) or driven a woman to take her own life.<sup>65</sup>

As a result of lobbying and agitation by the women's movement, a Joint Committee of Parliament, with 21 MPs from a number of different parties, was appointed in Jan. 1981 to suggest ways to end the giving of dowry and to prosecute those responsible for "dowry deaths". By August of 1982 the Joint Committee of the Houses (Chaired by Smt. Krishna Sahi) was appointed to examine the question of the Working of the Dowry Prohibition Act.<sup>66</sup>

The urgency for legal reform to regulate Dowry prohibition was stressed by women activists because police records revealed that a shockingly high rate of women had died due to burning: in 1983 alone 690 women had died this way, of which 270 were between 18 and 25 years of age.<sup>67</sup>

When Larger numbers of women's organisations drew Parliament's attention, through militant and emotional protests, to the urgency of acknowledging that dowry 'deaths' are really dowry murders, and must be investigated as such, the Home Ministry in 1983 declared that unnatural deaths and cruelty to women in the family would require amendments in three different acts".<sup>68</sup>

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<sup>65</sup> Ibid., p. 79.

<sup>66</sup> For details see Report of the Joint Committee of the Houses to Examine the Question of the Working of the Dowry Prohibition Act, 1961. C.B. (II), No. 333 (New Delhi, Lok Sabha Secretariat, 1982).

<sup>67</sup> Haksar and Singh, *Demystification of Law for Women*, Lancer Press, Delhi, 1964, p. 103.

<sup>68</sup> Nandita Gandhi, *The Issues at Stake, Kali for Women*, Delhi, 1992, p. 217.

The purpose of the Criminal Law (Second Amendment) Act of 1983 is to encourage the prosecution and conviction of dowry murderers by : (1) expanding the categories under which prosecutions may take place, (2) forcing the police to investigate suspicious cases and (3) Loosening some of the evidentiary requirements for a finding of guilty. It attempts to accomplish these goals through amendments to the Indian Penal Code, the Code of Criminal Procedure and the Indian Evidence Act. The Criminal Law (2nd Amendment Act) 1983 introduced Section 498-A to the Indian Penal Code, making cruelty shown to a woman by husband or relatives a cognisable and non-bailable offence. A crime punishable up to three years imprisonment, plus a fine. Cruelty is defined in two ways. The first is "Conduct of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman". This is a significant departure from previous law in that it makes mental cruelty, not just physical abuse, a punishable crime.<sup>60</sup>

The second definition of cruelty ties it directly to continuing demands for dowry, cruelty means harassment of the woman with a view to coercing her, or any person related to her, to meet an unlawful demand for any property; or harassment because she or her relatives have failed

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<sup>60</sup> This law also expands the definition of abetment to suicide, a crime since 1860 under IPC Section 306. Section 306 was designed to prosecute only those who forced or encouraged a woman to commit sati. In response to local public pressure, police had occasionally called on section 306 to arrest family members who had apparently driven a woman to suicide. However, until 1983 there had been only two convictions throughout India under section 306 relating to a dowry death. Neera Chowdhary, "Tears Can't be measured", The Statesman, 9 July 1983.

to meet such demands. Again cruelty need not be a physical act, but may include psychological threats.

Secondly, Section 113A of the Evidence Act was amended to lessen the burden of proof on the complainant making it possible for the court to draw inference of abetment to suicide. Finally, the amendment to Section 174 of the Criminal Procedure Code (Cr.P.C.) prevented the hasty cremation of brides by making post-mortem examinations compulsory in cases where the woman had died within seven years of marriage. This made it easier for the relatives of the deceased woman to seek legal action.<sup>70</sup>

In response to the persistent demand of feminists for greater sensitivity to the harassment of women within marriage in order to prevent dowry murder, special police cells have been set up in many cities to deal with complaints under the new provisions.<sup>71</sup> But, as the National Perspective Plan on Women has pointed out, "these police cells are not aware of the changes in the law and are operating more or less like counselling units, counselling being done by police personnel, who are neither trained in professional counselling nor have the attitudes which are conducive to understanding of the problem".<sup>72</sup>

<sup>70</sup> Lawyers Collective, Recent Changes in Laws Relating to Women: Bombay: Lawyers Collective, 1985, pp. 9-11.

<sup>71</sup> The Dowry Prohibition (Amendment) Bill, 1986, Bill No. XXIX C of 1986 as passed by the Rajya Sabha on the 22 August, 1986. Section 8B provided for the appointment of Dowry Prohibition Officers.

<sup>72</sup> National Perspective Plan for Women 1988-2000, Report of the Core Committee set up by the Department of Women and Child Development, Ministry of Human Resource Development, GOI, 1988, p. 136.

Through the efforts of women's organisations,<sup>73</sup> the careless and hostile attitude of the police to complaints of dowry death had become well known to law makers, and the 1983 Act included several provisions designed either to force the police to investigate or to allow private citizens to petition the courts directly. Women's organisations had complained that critical evidence was often covered up, most importantly, the body of the victim was often cremated before it could be examined by medical practitioners or even seen by the women's relatives. In early law, police officers were granted considerable discretion to judge if "there is any doubt regarding the cause of death", and only if so, to order a medical examination of the body. It is because of the pressure of the women's movement<sup>74</sup> that the 1983 Act specifies that an officer must order a postmortem in any death of a woman, who has been married for less than seven years in the event of suicide, or circumstances that create "a reasonable suspicion that some other person committed an offense" against her or when any relative of hers makes such a request.

In addition, under the 1983 Act, there is recourse for investigation aside from the police: magistrates are empowered to hold enquiries into the cause of death of any woman who dies in the circumstances described above.

The final way in which the Criminal Law (Second Amendment) Act of 1983 attempts to strengthen efforts to prosecute dowry death is with an

<sup>73</sup> "Mobilizing Against Dowry Murders", *Manushi* No. 13 (1983), p. 41.

<sup>74</sup> "Protests Against Bride's Death", *Manushi* No. 36, 1986, p. 21. Also "Public Outcry", *India Today*, 31 Dec. 1987, p. 21.

amendment to the Indian Evidence Act (Section 113-A). In the event of the suicide of a woman who has been married for less than seven years, where it can be shown that her husband or his relatives had "subjected her to cruelty", the Court "may presume" that "such suicide had been abetted by her husband" or by his relatives; abatement to suicide is a criminal offence.<sup>75</sup>

For the most part, the Criminal Law (Amendment) Act of 1983 was welcomed by women's organisations and feminists as strengthening the possibilities for the prosecution of dowry deaths, or deaths inspired, more generally, by the abuse of women within their marriage home. However, women activists made some valid complaints that the bill didn't go far enough.<sup>76</sup> While it was considered an important advance that the courts would consider a complaint of cruelty made by the deceased relatives, feminists asked why the bill did not make an allowance for complaints to be made by registered women's organizations.<sup>77</sup>

Women activists found yet another complaint about the Act that it had nothing at all to say about the confused legal status of dying declarations: who must record them, and under what circumstances they will be considered valid evidence.<sup>78</sup> the courts regularly make a practice of

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<sup>75</sup> Agnes Flavia, *Marital Murders: the Indian reality*, Legal News and Views, 7(5), May 1993; pp. 163-165.

<sup>76</sup> Anuradha, R.V. Dowry deaths: statutory amendments and judicial response. Lawyers Collective, 7 (12); Dec. 1992, pp. 13-15.

<sup>77</sup> Centre For Women's Development Studies (CWDS) Bulletin 1:2 (1983), p. 8 (N. Delhi).

<sup>78</sup> Shahnaz Anklesaria, "Married for burning: No basic change in dowry law.



dismissing a woman's dying declaration because a magistrate was not present, or because the woman was in too much pain to be believed.<sup>79</sup>

Even greater criticism was levelled at the 1983 act for making no assault on dowry. The issue of dowry was finally addressed after several years' delay, in what proved to be a very disappointing Dowry Prohibition (amendment) Act of 1984. Feminists, women's organizations, and the English-Language press bitterly denounced several aspects of the Act, which for the most part ignored the suggestions that had been made by the joint committees of the Parliament.<sup>80</sup>

In the new law: (1) the definition of dowry is too filled with loopholes to allow for prosecutions, (2) no ceiling is put on the amount of gifts that may be given, (3) the giving of dowry is equated with the demand for dowry, (4) the punishment is too weak and (5) there is no provision for enforcement. In New Delhi, nine women's and girl liberties organisations demanded that an individual found guilty of giving or receiving dowry should be punished for a minimum of one year imprisonment and not six months as proposed.

However, the 1984 amendment was definitely a step forward. For the first time, the new law had declared the giving or taking of dowry as a cognizable offense, meaning that the police may make arrests without first

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<sup>79</sup> e.g. see the reported case - Harvinder Kaur V. Harvinder Singh Chowdary, A.I.R. (1984) delhi, 66, discussed in Nandita Haksar, op. cit., p. 25.

<sup>80</sup> Anklesaria, Shahnaz, Married for burning: no basic change in dowry law. *Statesman*, 28 May, 1984, p. 6, also Dowry Amendment bill: another toothless legislation. *Economic and Political Weekly*, 19(37), Sept. 1984, pp. 1609-1610; Defining Dowry: the Courts View, *Statesman*, 19 Sept. 1983.

obtaining a warrant. In addition, courts will later take cognizance of an offense if registered by the police, if a complaint is made by a relative of a person involved, or if a complaint is made by a "recognized welfare institution or organisation". Unlike in the 1983 criminal (Second Amendment) Act, here the role of women's and Civil Liberties Organizations is recognized.<sup>81</sup>

Women activists were not satisfied with the implementation machinery. There was a demand that the state appoint Dowry Prohibition Officers for local areas, who should in turn be associated with an advisory board of women social workers.<sup>82</sup>

A small move towards implementation came in 1986, when the parliament passed another amendment to the Dowry Prohibition Act. The new act allowed for the appointment of 'dowry prohibition officers' by the states. The new law raised the punishment for taking of dowry to a minimum of five years. Finally, the new bill has made dowry murder a crime listed in the Indian Penal Code.<sup>83</sup>

Thus it can be concluded that the women's movement had generated enough publicity, concern, and pressure to move the govt. to act in a way that would give it the appearance of fighting dowry death. But legislative action has so far fallen far short of what the women's

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<sup>81</sup> For details see - Ved Kumari, Recent trend in law reforms. Workshop on Violence Against Women, New Delhi, March 27-28, 1995 (CWDS), S.C. Bhatia Ed. Social audit of dowry legislation, New Delhi, University of delhi.

<sup>82</sup> Leslie Calman, op. cit., pp. 136-137.

<sup>83</sup> Agnes, flavia. Marital Murders: The Indian reality, Legal News and Views. 7(5), May 1993, pp. 163-165.

movement desires. While there have been some celebrated court victories for women's organizations - most notably the Supreme Court's upholding in 1985 of the conviction of the murder of Sudha Goel<sup>84</sup> - the number of convictions is still infinitesimal.

Some women activists on an analysis of their campaign against dowry realised that the problem of dowry arose not at the time of the marriage but only after the girls had died, in order to avenge their deaths and retrieve the gifts. The death of the daughter did not in any way change the reactionary and conservative approach to marriage and the parents were willing to marry their next daughter with equal amounts of dowry.<sup>85</sup>

This factor made the activist reassess their stand on the issue of dowry. The articles in *Manushi* by Madhu Kishwar 'Rethinking Dowry Boycott', created a lot of controversy and a public debate.<sup>86</sup>

## **RAPE :**

The first organized feminist response to the question of legislation on violence occurred in 1974 after the refusal of the Supreme Court to reopen the Mathura Rape case.<sup>87</sup>

Mathura a young tribal girl, sixteen years old was raped by 'two policemen within the premises of the police station. The sessions court

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<sup>84</sup> Cited in Deshpande, anjali, New Lead for Anti Dowry Campaign, *Main Stream*, 23 (46), 17 July 1982, pp. 29-30.

<sup>85</sup> Madhu Kishwar: Dowry to Ensure her Happiness or to Disinherit Her, *Manushi*, No. 31 (Nov-Dec. 1985), p. 31.

<sup>86</sup> Madhu Kishwar: Rethinking Dowry Boycott, No. 48 (Sept-Oct 1988), p. 10.

<sup>87</sup> For details of the Mathura Rape Case see Chapter on Violence.

acquitted the policemen on the ground that since Mathura had eloped with her boyfriend she was 'habituated to sexual intercourse' and hence she could not be raped. The Sessions Court declared the policemen innocent and Mathura a liar.<sup>88</sup> The High Court reversed the judgement on the ground that, there is a world of difference between sexual intercourse and rape.

The Supreme Court set aside the High Court judgement and acquitted the policemen and held that, since Mathura had not raised any alarm, her allegations of rape were untrue. The Supreme Court declared "that as there were no injuries shown by the medical report", the story of "stiff" resistance having put up by the girl is all "false" and concluded that the alleged intercourse was a peaceful affair.<sup>89</sup>

The Supreme Court judgement aroused a great deal of anger among women's groups, who organised themselves to study the provisions of law.<sup>90</sup> They discovered the extent to which the rape law was loaded against women, placing the burden of proof in cases of rape on the victim herself and using evidence of a woman's sexual past as a way of establishing the consent of the victim to the act of rape.<sup>91</sup>

Women activists demanded that in a rape trial a woman's past sexual history and general character should not be used as evidence.

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<sup>88</sup> Haksar and Singh, *Demystification of Law for Women*, op. cit, p. 73.

<sup>89</sup> *Tukarram and another Vs State of Maharashtra* 1979 AIR 185 SC.

<sup>90</sup> Agnes Flavia, *The Anti-Rape Campaign: the struggle and the setback*. In the struggle against violence Ed. Chhaya Datar, Stree, Calcutta, 1993, pp. 99-105.

<sup>91</sup> See *Dhagamwar, Vasudha*, What really is 'consent'? *Mainstream*, 19 (18); 3 Jan. 1981, pp. 14, 20.

*Contractor, Dinaz Adi*, Rape, Conference on Violence Against Women: Women Against Violence, Bombay, Dec. 13-17, 1993.

The response of the govt. to the campaign was prompt. A Law Commission was set up to study the demands. The immediate provocation for govt. efforts was because of the mounting criticism in Parliament<sup>92</sup> and outside to amend the Rape law and plug the loopholes which were behind the paucity of convictions. The concern of the govt. comes out clearly from the demi-official letter written by the Secretary to the Ministry of Law and Justice to the Secretary of Law Commission, in which he states 'there has also been a certain amount of criticism that the law does not contain enough safeguards.'<sup>93</sup> Women's organisations submitted their desired amendments in the law. Some of the important amendments suggested were that women police should interview and interrogate women who were molested, that the trial should be held in camera and that well-known women's organisations should be selected to examine and deal with such cases.<sup>94</sup> Another letter forwarded was from the Maharashtra State Women's Council which among other points raised by them contained one very important one that the burden of proving innocence in a case of rape should rest on the accused.<sup>95</sup>

The Law Commission had long discussions with various women's organisation and women activists before finalising its report. In December 1983, the criminal Law (Amendment) Bill was passed. The bill was focussed almost solely on custodial rape and even here, most of the

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<sup>92</sup> See Patel, Vimla, To all members of Parliament: a petition submitted by Forum Against Rape on 10 March 1980 (Mimeo) (CWDS).

<sup>93</sup> Lolika Sarkar, Law Commission of India, CWDS, New Delhi, pp. 61-71.

<sup>94</sup> Lotika Sarkar, *op. cit.*, p. 62.

<sup>95</sup> *Ibid.*, p. 62.

suggestions made by women's groups and the Law Commission were ignored.<sup>96</sup>

The most positive aspect of the new law was a direct response to the Mathura and Rameeza Bee cases<sup>97</sup>: in the event of an accusation of custodial rape - that is, when a rape is alleged to have been committed by a man in authority, including a police officer, a jail or women's hostel superintendent or a hospital staff member - the burden of proof that the incident was not a rape now lies with the accused.<sup>98</sup>

Women's groups complained that the definition of "custodial" rape was too narrow, and did not encompass those who have other, unofficial forms of power over women, particularly economic power. Under the new law, the minimum sentence for custodial rape is ten years; that for other rapes was increased from two years to seven years. Many women argue the difference implies that private individuals like landlord and employers do not have coercive power that they can abuse. Geeta Mukherjee, a CPI M.P. had tried to expand the meaning of custodial rape to include "power rape", or economic rape. She and others pointed out that rape seems to be most often committed against economically powerless women, particularly tribals and landless labourers, often by landlords, contractors,

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<sup>96</sup> For analyses and critiques of the Criminal Law (Amendment) Act, 1983, see lawyers collective, *Recent Changes in Laws Relating to Women*, Bombay: Lawyers Collective, 1985, pp. 2-8, Ruth Vanita, "The Bills to Amend the Rape and Dowry Laws - Mending or Marring?" *Manushi*, No. 16 (1983), pp. 27-30. "The New Law on Rape", *CWDS Bulletin* 2:1 (1984), pp. 8-9.

<sup>97</sup> For details of these case, see Chapter on Violence.

<sup>98</sup> *Chatterji, Shoma A.*, Custodial rape and spousal rape. In *The Indian Women's Search for an identity* by *Shoma a. Chatterji*, Vikas, New Delhi, 1988, pp. 16-24.

employers, money lenders or the bullies who are hired by them to keep workers in line".<sup>99</sup>

The most controversial aspect of the new law is that it abrogates the freedom of the press to cover rape trials. Rape trials are to be held 'in camera', and it is illegal "for any person to print or publish any matter in relation to any proceeding" concerning rape. In addition, the Act makes it a criminal offense, punishable by two years' imprisonment and a fine, to print or publish the name of a rape victim or any information which "may make known the identity" of such a person.

Some women's organizations had requested in camera trials, but they wanted access granted to concerned social workers, members of women's organizations and the press; their goal was to keep out intimidating or prurient-minded members of the public. Also, some had asked that the name of the victim not be printed, in order to protect her privacy.<sup>100</sup>

The blanket ban on press coverage greatly dismayed all segments of feminist opinion, the civil liberties organizations, the press, and

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<sup>99</sup> "Interview of the week : Geeta Mukherjee", Sunday Observer, 11 Dec. 1983. A study by the Bureau of Police Research and Development in 1983 found that accused rapists in rural areas "were mostly those holding women in positions of economic subordination". See "Rape: Controversial Code", India Today, 31 Dec. 1983, p. 134. There are also ample examples of massive, systematic rapes that occur during social and labour unrest by hired thugs of landlords or by the police against agricultural labourers or industrial strikers.

See Shahnaz Anklesaria, "Women and Rape: Defenceless Before Laws and Man", Himmat, 7 March 1980, pp. 13-14.

See also Uma Chakravarti, "Rape, Class and the State", UPCL Bulletin 2 : (1982), pp. 16-17.

<sup>100</sup> How 4 : 2-3 (1981), p. 27 published a statement by five Delhi Women's organizations - Delhi Women Lawyers Federation, Karmika, Manushi, Stri Sangharsh, and Action India - which made these recommendations.

opposition MPs, who walked out in protest following the rejection of an amendment that would have allowed the press freedom to report cases with the exception of the victim's name.<sup>101</sup>

Women's organizations argued that the ban on any information relating to the victim was misguided; the reputations of the victims of rape would already be damaged in their local communities, and the severe prejudice they would encounter would not be made any worse by publicity.<sup>102</sup> They pointed out, too, that with no press coverage and no publicity by women's organizations, the absurd and sexist logic of courtroom decisions, so frequently encountered in rape cases, cannot readily be exposed. No press coverage, in camera trials, and the failure to prohibit examination of the victim's past sexual life do indeed seem to portend a continuation of gross judicial prejudice.<sup>103</sup>

Thus, the passage of the Criminal Law (Amendment) Act in 1983 was definitely a feminist victory but a limited one. The fact that parliament felt compelled to act in some way, to at least give the appearance of tightening up law and govt. actions with respect to the crime of rape, signifies a small triumph: segments of the public consciousness had been raised and pressure mobilized. The campaign against rape succeeded in producing a nationwide debate on women's issues. Thus the first

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<sup>101</sup> "Bill on rape passed after walkout", Hindustan Times, 7 Dec. 1983.

<sup>102</sup> Kalpana sharma, "Cosmetic changes in rape law", Stree No. 4, March 1984, p. 21.

<sup>103</sup> Women's organizations against Rape in India: Report of a national meeting - Forum Against Oppression of women. In *women and Violence : realities and responses worldwide* Ed. Miranda Davies, London. Zed Books, 1994, pp. 60-84.



categories of violence focussed on by the women's movement were rape and murder of young brides for dowry. It was realised that these were the most brutal expressions of a wide spread phenomenon of domestic violence.

**The next on the agenda, women's economic empowerment :**

Women's groups demanded that for the empowerment of women it was necessary to confer on them property rights and other entitlements. This is because powerlessness arises essentially out of lack of access to resources. Empowerment means facilitating access and ensuring rightful shares in the material resources of the community.<sup>104</sup>

The National Perspective Plan for Women 1988-2000 A.D. for the first time recognized that women should be viewed as a weaker segment of society or as passive beneficiaries of the development process, but as a source of unique strength for reaching the national goals.<sup>105</sup> The Plan recommended the following changes in the laws with a view to conferring additional proprietary rights on women. (a) All matrimonial property should be registered in the joint names of husband and wife. Where it is not in the joint names, the wife should have the right to ask for injunction, until the matter is settled, if the marriage breaks down, (b) the parents should be prevented from denying daughters their rightful share of property by making wills disinheriting them, (c) the right of the wife to the matrimonial have must be guaranteed.

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<sup>104</sup> Parashar, Archana, *Towards Gender Justice, women and Family Law Reform in India*, Sage Publications, Delhi, 1992, p. 71.

<sup>105</sup> GOI (1988) *National Perspective Plan for Women 1988-2000 A.D.* New Delhi, Dept. of Women Child Development, Ministry of Human Resource Development, p.1.

Women's groups also demand the right to matrimonial property as a step towards empowerment of women. They also demanded the right to maintenance of the discarded and divorced wife be strengthened. The Law Commission has made some sound suggestions for legal reforms in this respect.<sup>106</sup>

The husband is under a legal liability to maintain his wife whether before judicial separation or after. The secular law of maintenance contained in section 125 of the Cr.P.C. 1973 provides for payment of a limited amount of maintenance even to a divorced wife.

Women's groups demanded that the minimum amount of maintenance for a divorced wife should be calculated on the basis of basic needs of the woman and the upper limit of the amount of maintenance as provided in Section 125 of the CrPC should be removed.

As a result of the pressure exacted by women's groups, the National Perspective Plan for women 1988-2000 A.D.<sup>107</sup> recommended 'Necessary amendments in procedure must be brought about for the maintenance to be paid through courts or arrangements made by the courts to ensure timely and correct payment.<sup>108</sup> The NPP also recommended that the minimum amount of maintenance should be

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<sup>106</sup> Law Commission of India, 132nd Report on Need for Amendment of the Provisions of Chap. IX of the Code of Criminal Procedure 1973 in order to Ameliorate the Hardship and mitigate the Distress of Neglected Women, Children and Parents (GOI 1991) also see Flavia Agnes (1992), "Maintenance for Women : Rhetoric of Equality", EPW Vol. XXVII, No. 41, p. 223 (Oct. 10).

<sup>107</sup> National Perspective Plan for Women 1988-2000 AD, op. cit., p. 148.

<sup>108</sup> Ibid., p. 148.

calculated on the basis of basic needs of the woman and on the basis of the earnings of the spouse.

It is again, as a consequence of efforts made by the women's movement that the 'Equal Remuneration Act, 1976 was passed. This major piece of legislation dealing with equal rights in employment for women workers was intended to meet the demand for equality in employment voiced by working women. Although the Constitution of India guarantees that there will be no discrimination based on sex<sup>109</sup>, it must be noted that this guarantee is available against the state only. It follows that equality in employment was guaranteed to woman employed in public sectors. The private sector was left untouched and an employer can lawfully discriminate against women employees. Thus, there was no obligation for private employers to pay equal pay for equal work. It was to remedy this situation that the Equal Remuneration Act 1976 was passed. The statement of objects and reasons of the Act states that Article 39 of the Constitution envisages that the state should direct its policy, amongst other things, towards securing that there is equal pay for equal work for men and women. The ERA was passed to give effect to Article 39. The statement of the objects and reasons make a specific reference to the fact that the Act is being implemented in the International Women's Year. The Act provides in Section 4 that "no employer shall pay to any worker, remuneration at rates less favourable than those at which remuneration is

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<sup>109</sup> Supreme Court, in *Dasarathe V. State of A.P.A.* 1961 S.C. 564 (569) declared that Article 15 of the Constitution is available to citizens only and it prohibits discrimination against any citizen in any matter at the disposal of the state on any of the specific grounds, namely, religion, caste, sex or specific place of birth.

paid by him to workers of the opposite sex". The Act was amended in 1987 to provide for more deterrent punishment and to prohibit discrimination not only in initial recruitment but also in any condition of service subsequent to recruitment such as promotion, training or transfer. However, in spite of this Act women continue to be discriminated in jobs and conditions of service. Employees are reluctant to employ women because of the additional financial liability that such employment entails. If there are 30 or more women employees provision for creches is required to be made.<sup>110</sup> Further, they have to be given maternity leave.<sup>111</sup> Women are also discriminated against because there is a mistaken belief that a woman has lower efficiency than a man's.

Women are vital and productive workers in India's national economy. They make up one-third of the labour force, though this is rarely quantified through statistical data that are available because two sectors, namely domestic work and the unorganized sector in which women mostly work are not included in such statistical surveys.<sup>112</sup> Given this fact it is unfair to look upon women as less productive and therefore discrimination against her in employment is wrong.

Whilst evaluating the implementation of the ERA the picture that emerges is very different. These have been very few cases of complaints

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<sup>110</sup> Sec. 48 of the Factories Act 1948.

<sup>111</sup> The Maternity Benefits Act 1961.

<sup>112</sup> Govt. of India (1988) Shram Shakti: Report of the National Commission on Self Employed Women in the informal sector. Also Bennett, Lynn (1991), Women, Poverty and Productivity in India, EDI Seminar Paper No. 43. The author concludes that the labour force participation of women and their proportional contribution to total family income are the highest in households with the lowest economic status".

filed under the ERA. This is a reflection of various factors (a) that the provisions of the Act have not been well publicised amongst women workers, (b) that women workers are more vulnerable than male workers and therefore more cautious about lodging a complaint.<sup>113</sup> The existence of the ERA has made little impact on the employment of women.

#### **THE FAMILY COURTS ACT, 1984 :**

In 1975, the committee on the status of women recommended that all matter concerning the "family" should be dealt with separately.<sup>114</sup> This is because there is no distinction drawn between matrimonial cases and other civil suits.<sup>115</sup> This frequently leads to unusual delay which stands in the way of conciliation and further embitters the relationship of the parties. In a case filed for restitution of conjugal rights by the husband, the appellate judge referred to the "unfortunate fact that it has taken more than eight years for the appeal to come to me, such long delay ... is extremely regrettable, because in such cases the time factor is of vital importance".<sup>116</sup>

Conciliation which needs to be the main consideration in all family matters, is not a guiding principle in the statutes dealing with them. The legislators of the Hindu Marriage Act recognised the need but made only a half-hearted attempt to break away from the traditional approach.<sup>117</sup> While

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<sup>113</sup> Indira Jaisingh Ed. Justice For Women, The Other India Press, Mapusa, goa.

<sup>114</sup> CSWI Report, op. cit., p. 141.

<sup>115</sup> Kusum Lata V. Kamta Prasad, 1965. Alld. 280, where the view expressed was that there was no difference between a petition under the Hindu Marriage Act and an Ordinary Civil suit.

<sup>116</sup> Avinash Prasad V. Chandra Mohini, 1964. Alld., 490 where the delay was eight years.

<sup>117</sup> CSWI, op. cit., 4.229, p. 141.

they mentioned the need for conciliation, but emphasising that the duty of the judge is to make every endeavour to bring about a reconciliation between the parties"<sup>118</sup>, they failed to provide the infra-structure necessary, like pre-trial investigation, specialised opinion of psychiatrists or social workers, which would help the judge to perform this role. Therefore the committee on the status of women (CSWI) recommended that 'the solution lies in 'establishing family' courts for settlement of all problems dealing with personal law, where the role of the lawyer in adversary procedure is substituted by conciliation'.<sup>119</sup>

In 1984, in partial recognition of the need for extending the protective arm of the state into the family, the Family Courts Act was passed. This was intended to "provide for the establishment of Family Courts with a view to promote conciliation in and secure speedy disposal of disputes relating to marriage and family affairs".<sup>120</sup>

The Family Courts Act, 1984, allow all disputes, relating to family matters such as divorce, maintenance, guardianship and custody to be heard and settled in special courts called Family Courts.

The Family Courts Act was the result of the efforts made by the women's movement for reforms in law concerning women. 'The women's movement focussed attention on the unequal power relationship between men and women at every level and the anti-women bias within the law and in

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<sup>118</sup> Hindu Marriage Act, Sec. 23(2).

<sup>119</sup> CSWI, op. cit., 4.230, pp. 141-142.

<sup>120</sup> Haksar and Singh, op. cit., Demystification of Law for Women, p. 96.

the court. A demand was made for laws and procedures which would ensure women's economic rights within marriage and make divorce proceedings speedy, less expensive, less traumatic and more just for women.<sup>121</sup>

'But the Family Courts Act was not aimed at tilting the balance in favour of women. Instead the Act was committed to preserving the institution of marriage. This was a regressive approach, as by now it is a historically well established fact that the institution of marriage can be preserved only at the cost of women - by denying women property rights and the right to divorce.'<sup>122</sup>

By entrusting conciliation efforts to judges, rather than lawyers, and holding proceedings in secret, the cause of women themselves was not served. Women's advocates have begun to recognise that the family courts are merely the mechanism for preserving the patriarchal family rather than redressing the grievances of women. Feminist groups nationwide have therefore set up centers for counselling and aid, providing legal, medical and financial advice to women faced with difficult family situations, although it is recognised that such services fulfill only a fraction of the needs of all sections of Indian women.<sup>123</sup>

### **Sati :**

The Roop Kanwar Sati case in Deorala, Rajasthan (which has been dealt at length in the Chapter dealing with Violence) wherein an eighteen

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<sup>121</sup> Flavia Agnes, "Family Courts : From the Frying Pan Into The Fire", in Indira Jaising Ed. Justice For Women, op. cit., p. 285.

<sup>122</sup> Ibid., p. 286.

<sup>123</sup> Janaki Nair, Women, and Law in Colonial India, Kali for Women, N. Delhi, p. 239.

year old Roop Kanwar was murdered on the funeral pyre of her husband was looked upon by progressive and women's organisations as a murder blessed by fundamentalism and political opportunism. The Rajasthan University Women's Association, the Janwadi Mahila Samiti, Nari Chetna Manch, Mahila Manch, Rajasthan, Kisan Sangathna and the People's Union for Civil Liberties demonstrated before the State's Secretariat to demand action against the murderers, as well as the negligent police personnel. Persecuted by the police, Swami Agnivesh, a civil rights activist, and his band marched from Delhi to Deorala.<sup>124</sup>

Caught between popular local fundamentalism, national protest and media attention, and the illegality of the act, the Rajasthan Government passed a quick ordinance based on the anti-Sati law formulated by the British in 1829. The Central Government followed suit with the Commission of Sati Prevention Bill, 1987. The significant sections are - Sec. 2 (1) (b) clearly lays down that Glorification of Sati means ceremony, procession, and the propagation of a Sati and creation of a trust etc. and this constitutes an offence.

Sec. 4 Any person abetting Sati, directly or indirectly, physically or persuasively, can be punished with death, for life with or without fine.

Both the State and Central Acts (which draw upon the British laws) denounce the practice of Sati. The striking difference is that both these laws were rushed through the legislature without any public debate or

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<sup>124</sup> Gandhi, N. Shah, op. cit., p. 222.



consultation. Once again, as in the case of suicide, the woman is also seen as the offender.

The law deals strictly with abettors to the crime of Sati, apart from the close relatives of the husband, there are many others who indirectly abet this crime. By not categorising them, the law indiscriminately punishes both the one who lights the pyre and the one who watches it being lit. In such cases judges usually shy away from severe penalties.<sup>125</sup>

**Prostitution : The Suppression of Immoral Traffic in Women and Girls (amendment) Act, 1978 :**

The 64th Law Commission Report stated that prostitution could not be banned totally ..... "Law in every country has tried to regulate it so that it may be kept within its legitimate bounds without unduly encroaching upon the institution of marriage and family".<sup>126</sup>

The basic objective of the Suppression of Immoral Traffic in Women and Girls Act, 1956 was to punish brothel keepers, procurers and pimps and prevent prostitution in or in the vicinity of public places. Women's groups were successful in getting the Act amended in 1978 and again in 1986. The Act was retitled as "The Immoral Traffic (Prevention) Act". It is applicable to both men and women. It provides that the special police officer / trafficking police officer making a search shall be accompanied by at least two women police officers, and that a woman/girl would be interrogated only by a woman police

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<sup>125</sup> Gandhi N. Shah, p. 224.

<sup>126</sup> National Specialized Agencies and Women's Equality, Law Commission of India. Sixty Fourth Report. Suppression of Immoral Traffic in Women and Girls Act, Chairman, P.B. Gajendragadkar Report submitted March 1975, pp. 46-49 (CWDS), N. Delhi, 1988.

officer and in their non-availability, in the presence of woman social worker. The bonafides of those coming forward to take custody of the rescued victim, must now be investigated by a recognised welfare institution or organisation before she is released. These were the amendments made with a view of protecting the interest of prostitutes.

### **The Indecent Representation of Women (Prohibition) Act, 1986 :**

As a consequence of the efforts and lobbying of women's groups, the Indecent Representation of Women (Prohibition) Act, 1986 was passed.<sup>127</sup> In Sec. 2(c) of the Act 'Indecent' Representation of Women is defined as depiction which is indecent or derogatory to women or is likely to deprave or injure public morality.

Section 4 prohibits publication in all forms, which contain indecent representation of women.

The present criminal justice system in order to provide justice to women has to be more sensitive to women. It puts crime against women on the same footing as other crimes and fails to take into account the specific and different nature of these crimes. The system therefore fails to take into account the oppressed status of women and their vulnerability to these crimes. It also fails to take into account the normal reactions of victims of such crimes. It is therefore essential that the law relating to violence be completely overhauled to make them more comprehensive and closer to the experience of violence faced by women.<sup>128</sup> In fact a committee appointed by

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<sup>127</sup> For the campaign against 'obscurity', and indicency see Chap. on women & Violence.

<sup>128</sup> Kirti Singh, Women and Law : Experience of Two Decades, The Administrator Vol. XL, July-Sept. 1995, pp. 37-49.

the National Commission of women has suggested sweeping changes in the law relating to sexual assault of women and children. It has suggested that a separate law be framed defining the different kinds of sexual assault. The Law Commission (GOI 1980)<sup>129</sup> has suggested various procedural changes to ensure that the police investigate the crimes against women. These included punitive measures against the police for not registering the case and carrying out investigation properly. Procedural changes are also required to ensure that victims of violence can testify in courts and elsewhere without being harassed for speaking the truth. Another area which will have to be tackled would be the fairly widespread gender bias that exists in sections of the police and judiciary. Women's organizations have suggested intensive and extensive gender sensitization of the police and the judiciary to make them aware about the rights of women and the prevailing discriminations against them. Women activists assert that all these changes are important first steps to make the criminal justice system more responsive to women. Finally, one would agree with the All India Democratic Women's Association thinking that the demand for laws "forms the backbone of any movement for progress ... it is true that laws alone can not fundamentally alter the legal status of women ... cruelty against women cannot be arrested. It primarily depends on the success in raising the consciousness of the people against discrimination against women".<sup>130</sup>

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<sup>129</sup> 84th Report of the Law Commission of India on Rape and Allied Offences, N. Delhi, GOI, 1980.

<sup>130</sup> Not a Uniform Civil Code, but Equal Rights, Equal Laws, AIDWA Publication Series, all India Democratic Women's Association, New Delhi.

## **CHAPTER 4**

### **THE WOMEN'S MOVEMENT AND THE RIGHT TO HEALTH**

## THE WOMEN'S MOVEMENT AND THE RIGHT TO HEALTH

Generally we define health mainly in physical terms, falling sick, diseases, unhygienic conditions and dietary deficiencies. But health is not only survival, it is a physical and mental state of well being, as well as a positive relationship with one's own body. Now, the gender aspect of health has become important. A growing body of data gathered by researchers, women activists, demographers, and planners indicates the serious problem of women's health in our country as different from the health of the population as a whole. Secondly, what has been pointed out is that women's health problems are not only related to their "motherhood" roles as govt. health programmes would have us believe, but are in fact related to all stages of their life cycles.<sup>1</sup>

It is commonly said in our society that "a woman prepares the food but is the last to eat". This key sentence encompasses both the physical and social reasons for her poor health, and her lack of access to health care.<sup>2</sup> The quantity and quality of food women eat affects them throughout their lives. They not only eat last and therefore the least, but are the ones who consume stale food which is not offered to male members of the family. Men and women shrug this observation off with the argument that

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<sup>1</sup> FRCH/ICSSR/ICMR Health Status of the Indian People : A Supplement to the ICSSR/ICMR Report - Health for All : An Alternative Strategy, Bombay (1987) cited in n. Gandhi n. Shah. The Issues At Stake, Kali For Women, 1991.

<sup>2</sup> National Perspective Plan for Women 1988-2000 A.D. Ministry for Women and Child Development. Tables showing comparison between the nutritional status of male and female children and average per capita intake of calories by age and sex. Table 10, 11 and 12, pp. 127-128. Appendix 3, 4 and 5.

in any case women require less food because they donot work as hard as men. A study on energy expenditure and calorie intake shows that woman expend 53% of human energy on survival tasks while men use 31% and children 16 percent. A corresponding look at calorie intake shows that women consume 100 calories less than what is expended, while men consume 800 calories surplus. Secondly, a woman's calorie intake is usually at "maintenance" level and does not make any allowances for the additional 500-600 calories required during pregnancy and lactation.<sup>3</sup> A pregnant woman usually consumes from 1400 to 1600 calories a day while the ICMR recommends an intake of 2500 calories a day. Most woman in India suffer from "nutritional anaemia" which is the major cause of low resistance among young women and of rapid ageing.<sup>4</sup>

Today on an average, a woman becomes pregnant eight times in her prime reproductive age (15-45 years). Of the children born of these pregnancies, three to five survive, usually those who are breast fed for two to three years. Thus, of the total 360 months of reproductive life, 200 months, or 50 to 60 percent of the time, are spent in pregnancy and lactation.<sup>5</sup> Repeated pregnancies affect the weight and resistance level of the female. In a study conducted in Delhi, it was found that mothers who had borne more than three children weighed significantly less than those

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<sup>3</sup> Batliwal, Srilata. "Rural Energy, Scarcity and Nutrition: A New Perspective" Economic & Pol. Weekly, Vol. XVIII, Feb. 27, 1982 also "Women in Poverty: The Energy, Health and Nutrition Syndrome" foundation for Research in Community Health, Bombay, 1983.

<sup>4</sup> N.P.P. for Women 1988-2000 A.D. op. cit. Table 14 and 15, p. 130. Appendix 6 & 7.

<sup>5</sup> Jayarao, Kamla, "Who is Malnourished? Mother or Women?" A. Patel (Ed.) Health Care: Which Way to Go? Medico Friends Circle, New Delhi (1985).

who had had fewer pregnancies.<sup>6</sup> The poor, small size of women adults due to many generations of neglect, inadequate antenatal and obstetric care, repeated abortions and back-breaking work have definite connections with the extremely high mortality rates.<sup>7</sup>

It is not work, or any specific work, but over work which becomes women's biggest health hazard. Women are expected to bear the responsibilities of running the household and of child care. Over and above this, in most families they also participate in wage labour. The double burden of work in both the private and public spheres has, over the years, increased as life in rural and tribal areas is becoming more and more difficult. One of the negative outcomes of the govts. development policies has been the degradation and misuse of natural resources. For women this has meant walking much more every day to get a few buckets of water and to collect fuel and fodder. In a survey in two villages in the Himalayan region of Uttar Pradesh, it was found that women spent on an average 7.2 hours every day in collecting firewood.<sup>8</sup>

The other survival task which is women's responsibility is cooking with the use of traditional fuel made of agricultural waste, cattle dung, fire wood etc. When burnt, these have been found to be carcinogenic.<sup>9</sup> A study

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<sup>6</sup> FRCH / ICSSR / ICMR, Health Status of the Indian People : A supplement to the ICSSR / ICMR Report – Health for all. An Alternative Strategy, Bombay (1987).

<sup>7</sup> Nandite Gandhi, Nandita Shah the issues at stake, theory and practice in the contemporary women's movement in India. Kali for Women, 1992, pp. 104-105.

<sup>8</sup> Swaminathan, Madura, "Eight Hours a Day for Fuel Collection: Women's survival task in Garhwal Hills", Manushi No. 21, 1984, N. Delhi.

<sup>9</sup> Agarwal, Anil, "Domestic Air Pollution - the effect of wood smoke on the health of women". Manushi No. 28 N. Delhi (1985). Also Environment Changes and women in India, in Samya Shakti, vol. 2, No. 1, CWDS, New Delhi, 1985.

in Gujarat showed that the exposure of woman to three hours of this smoke in the kitchen is equivalent to smoking roughly 20 packets of cigarettes a day.<sup>10</sup> If a woman spends approximately 73,000 hours on an average in the kitchen in her life time it is disturbing to think of the sort of effect smoke pollution will have on her respiratory systems and general health.<sup>11</sup>

A cursory look at statistical indicators such as the sex ratio, life expectancy and mortality rates which are commonly used to gauge the physical well being of a population show a bleak picture of woman's health. The sex ratio in the case of women in India has systematically declined through the years. In 1901 there were 972 women for every 1000 men; in 1961 this figure was 941, 1971 it had stood at 931 and in 1981 there were 933 women for every 1000 men. The ratio is thus heavily tilted against women.<sup>12</sup>

In a study in Maharashtra, it was found that girls contributed almost two thirds of all deaths in the 0.6 year age group.<sup>13</sup> Another study in rural Punjab showed that female mortality under 15 years of age was about 50 percent higher than male mortality.<sup>14</sup> Age specific death rates indicate

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<sup>10</sup> Ibid.

<sup>11</sup> Prakash, P. "Women, Health and Environment: Some Issues for Discussion" Nat. Conference on Perspectives for the women's liberation movement in India, Bombay, 1985 in CWDJ, N. Delhi.

<sup>12</sup> See Karkal, Malini & Divya Pandey (1989), *Studies on Women and Population*. a Critique, Himalyan Publishing House, Bombay.

<sup>13</sup> Statistics from Registrar General of India, Reported in 'Health Statistics of India (1985). Central Bureau of Health Intelligence, Directorate General of Health Services, Ministry of Health for Statewise Sex ratios in India, Age-Sex Specific Death rates in India see Charts in Appendix No. 8.

<sup>14</sup> Karkal, Malini, "Differentials in Mortality by Sex", *Economic and Political Weekly*, Bombay.



higher mortality for female children and women for every five year period till 35 years of age.<sup>15</sup>

Micro studies have shed light on the fact that sex is the main determinant of infant nutrition, irrespective of economic development. It is worse in a situation of poverty. Studies indicate that while both boys and girls get less than recommended daily dietary allowances, girls are more deficient and suffer more from related disorders and illness.<sup>16</sup>

A WHO study, directed by V. Ramalingaswami, Director of the All India Institute of Medical Sciences has revealed that anaemia has the highest prevalence in India.<sup>17</sup>

The Report of The Committee on the Status of Women in India (CSWI) made an in depth study of the Health Status of Women in India.<sup>18</sup> The view taken was that the indicators of women's health status in India are drawn from two sources – Demographic trends and Access to health services.

The demographic trends as mentioned earlier have shown an adverse and declining sex ratio, and a higher mortality rate and lower life expectancy of women. The CWSI report declared that the decline in the sex ratio ever since 1901 is a disturbing phenomenon in the context of the

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<sup>15</sup> National Perspective Plan for Women 1988-2000 A.D. Table 6, p. 123. Appendix-II

<sup>16</sup> National Perspective Plan for Women 1988-2000 A.D., Ministry for Women & Child Development, Table 7, p. 126. Asok Mitra India's Population Aspects of Quality and Control, Vol. 1, Abhinav Publications, N. Delhi, pp. 371-397. Also The Girl Child and The Family an Action Research Study. Ed. S. Anandlakshmy, Sponsored by Dept. of Women & Child Development, HRD Ministry, Govt. of India, N. Delhi.

<sup>17</sup> Ibid., p. 393.

<sup>18</sup> CWSI Report, op. cit., pp. 306-345.

status of women. Demographers put forward various hypotheses to explain this like (a) higher under-enumeration of females in the Indian Census, (b) the higher mortality rate of females, (c) the marked preference for sons and the consequent neglect of female infants, (d) the lower status of women and the adverse impact of frequent and excessive child-bearing on the health of women and (e) the higher incidence of certain diseases.<sup>19</sup>

Women's health in India has been in an appalling condition and this is reflective of their secondary status in society. Despite a large body of information and understanding of the neglect of women's health, there have been very few long term health campaigns, on its part the government has largely concentrated on women's reproductive capacities while women's groups have mainly reacted to or opposed and criticised state programmes.<sup>20</sup> The structure and functioning of the health care system is determined by the health policy, plan outlays and budget allocations of the Central Govt. and the State governments. From pre-independence, there have been several efforts by committees, such as the Bhore Committee (1946), Mudaliar Committee (1961), Shrivastava Committee (1975) and the ICSSR and ICMR Study Report (1980) to assess the health of the population, identify the priority areas to be addressed by the government, give suggestions and recommendations.

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<sup>19</sup> CSWI Report, op. cit., p. 11.

<sup>20</sup> Nandita Gandhi Nandita Shah, 'The issues at stake: Theories and Practice in the contemporary women's movement in India, Kali for Women, N. Delhi, p. 113.

The women's movement has highlighted the fact that health policy equates women's health with maternal health. It is population control that overrides all policies and programmes.<sup>21</sup>

India was the first country to introduce a family planning programme in 1951 when there was worldwide hysteria about a possible population explosion. The rapidly expanding population of the world was compared to a time bomb which would eventually destroy everything. The planning commission in 1980 warned that "all plan projections of reduction of poverty and unemployment will go wrong if success is not achieved in containing the growth of population".<sup>22</sup> It is little wonder that with such fears, the govt. poured in money, material and personnel into family planning. Health programmes for women are women - targeted rather than women - oriented. The manner in which different methods of contraception are tested and promoted have turned women into human guinea-pigs.

During the Emergency (1975) when all civil rights were suspended, the State had the power and opportunity to pressurise and even force the medical staff and people into compliance. In Bihar the salaries of 50,000 govt. employees were withheld for three months while 600 or more lost their jobs because they had failed to bring in "volunteers" for sterilisations. This was true for many parts of the country, not surprisingly, the numbers of sterilisations showed a massive increase.<sup>23</sup>

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<sup>21</sup> Lakshmi Lingam, *Understanding Women's Health Issues*, Kali for Women, p. 118.

<sup>22</sup> Planning Commission, Government of India.

<sup>23</sup> N Gandhi, N. Shah, *op. cit.*, p. 115.

In 1973-74, 0.90 million sterilisations were conducted. This number went up to 1.35 million in 1974-75, 0.90 million sterilisations were conducted. This number went up to 1.35 million in 1974-75 and 2.50 million in 1975-76.<sup>24</sup> Although they were so aggressively pushed, sterilisation were not passively accepted. This was one of the main planks used by the opposition parties to whip up feeling against the ruling party, which finally ended in the collapse of the Indra Gandhi Govt. in 1977.<sup>25</sup> Having burnt their fingers once, the govt. became extremely careful in approaching men. This is evident because the thrust of the family planning drive is on women instead of men. In 1972-72 tubectomies accounted for 25.9 percent of the total sterilizations and this went up to 79.6 in 1981-82.<sup>26</sup> The widespread laproscopic sterilisation programme claimed 500 operations in a day, without resorting to PHC's or other health centers.<sup>27</sup> In 1983-84, sterilizations accounted for 79.1 percent in relation to the use of other methods and within this, Tubectomies accounted for 85.4 percent.<sup>28</sup> A survey conducted by the ICMR in 132 camps gives alarming information. A fifth of the camp sites didn't have life saving drugs and screening for detection of anaemia, hypertension and diabetes while in a third of these the equipment used for surgery was either not sterilised or improperly sterilised. As a result of this, in a three year period from 1985,

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<sup>24</sup> *Ibid.*, p. 117.

<sup>25</sup> Pupul Jayakar, Indira Gandhi, p. 9. The declaration of a State of Emergency in 1975 and Sanjay Gandhi's single minded dedication to family planning gave a boost to the sterilization campaign.

<sup>26</sup> Balasubrahmanyam, Vimal "Contraception as if women mattered", CED Bombay, 1986.

<sup>27</sup> Prakash, P., "Science and Technology", Eve's Weekly, Bombay, 9-15 March 1985.

180 deaths have been reported in Maharashtra, 92 in Uttar Pradesh, 86 in Gujarat, 82 in Kerala, 76 in Orissa and 66 in Andhra Pradesh.<sup>29</sup>

Health activists, women's groups and civil liberties groups have expressed concern not only at the overt coercion in the Govt's. Family Planning Programme but also at the medical danger this poses for a female population.

It was in the 1980s that terms such as 'reproductive rights' and 'reproductive health' gained significance. The first Global Women's Health and Reproductive Rights Meeting in Amsterdam marked the birth of the international reproductive rights movement which promoted the belief that 'women should be subjects and not objects of population policies'. Reproductive rights, as a concept and slogan gained currency in the 1980s as representing women's needs and interests. Various terms like reproductive health (RH) and Reproductive Self-determination (RSD) gained currency during this period. By far the most comprehensive definition has been given by the Women's Global Network for Reproductive Rights (WGNRR), Amsterdam.

... Women's right to decide whether, when and how to have children – regardless of nationality, class, age, religion, disability, sexuality or marital status – in the social, economic and political conditions that make such decisions possible. These rights include access to safe effective

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<sup>28</sup> Karkal, Malini, "Health Situation of Women in India", paper presented at the Shakti Workshop on Feminist Perspectives on Women Health and Reproduction, Dec., Bombay.

<sup>29</sup> Indian Express (21.7.89).

contraception and sterilisation; safe legal abortion, safe woman – controlled pregnancy and childbirth ... full information about reproductive health and health problems ... and good quality, comprehensive reproductive health services that meet women's need and are accessible to all women.<sup>30</sup>

'Population control programmes have not dealt with patriarchy that demands women to achieve status through reproduction and through begetting sons.'<sup>31</sup>

Health is a major issue in the Indian Women's Movement, along with the struggle for justice, dignity and equality. The growing discontentment with the manner in which women are being treated by the Family Planning Programme has led to spontaneous campaigns against new reproductive technologies. In the late eighties there were persistent campaigns by women health activists against injectable contraceptives like Net-en and Depo-Provera. The mid-1980s also witnessed the use of sex-detection tests and the growing incidence of sex selective abortions, which came to be known as female foeticide. Health activists, women's groups and civil liberties groups have expressed concern not only at the overt coercion, the insensitive ways of reaching people, and the potential misuse and spread of the family

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<sup>30</sup> Lingam Lakshmi, *Women Reproduction and the State*, Kali for Women, Delhi, p. 126.

<sup>31</sup> Karkal, Malini & Pandey Divya, *Studies on Women and Population, a Critique*. Himalyan Publishing House, Bombay, p. 10.

planning programme but also at the medical danger this poses for a female population and their offspring in future.<sup>32</sup>

### **THE CAMPAIGN AGAINST INJECTABLE HORMONES :**

The injectable contraceptives Net En and Depo Provera have had a chequered history from the time they were developed in the 1950s. All over the world, questions were raised about the safety of the use of these drugs as contraceptives, since their use was associated with many short-term and long-term adverse effects and hazards. Net En had been withdrawn from the market in 1971 following the development of tumours in rats, which indicated that the drug could be potentially hazardous in women. Simultaneously, there was much pressure on the authorities in UK and the USA by the world population control establishment to formally licence Depo Provera for contraceptive use so as to circumvent the accusation that a drug banned in the country of manufacturer was being promoted elsewhere. Public hearings were held in USA and UK, in which women's groups presented evidence about the health hazards and potential for abuse associated with the use of injectables.<sup>33</sup>

In India, in the early 1980s, women's groups and health activists were aware of the problems associated with injectable contraceptives. However, the hazards became a reality when news about clinical trials on Net En became public. Women's groups soon began to wrestle with the

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<sup>32</sup> Ravindra, R.P. The scarcer half: a report on amniocentesis and other sex determination techniques sex preselection and new reproductive techniques Ed. John D'Souza, CED Bombay, 1986.

<sup>33</sup> Enough is enough, Injectable Contraceptive - Net En: a chronicle of Health Hazards Foretold, a Saheli Report, 11 July 1999.

tongue-twisting names of these injectable contraceptives Norethisterone Enanthate (Net En) and Depot Medroxyprogesterone Acetate (DMPA or Dep Provera).

Grappling with medical terms and delving into the politics of population control, women's health and the machinations of the pharmaceutical industry, a familiarity with these terms grew. Soon, the campaign against injectables became virtually synonymous with the women's health movement in India.<sup>34</sup>

Net-en a product of the German Company Schering AG, is a bi-monthly injection that inhibits the production of gonadotropin, a pituitary gland hormone which, in turn prevents ovulation. It was withdrawn from the market in 1971 after breast and pituitary nodules were found in experimental rats. Schering however re-introduced Net-en by claiming that findings on rats were not applicable to humans.

In India, the ICMR had been conducting research and trials on injectable contraceptives. Following the first ICMR press release in 1983 declaring its intention to introduce Net En into the family Planning Programme, women's groups and health groups like the Drug Action Network and Medico Friends Circle were trying to gain information about the clinical trials. Information which was systematically denied. Seven women's groups in Bombay received prior information about a closed door meeting organised by the Family Planning Association of India for

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<sup>34</sup> Balasubramanyan, Vimal "Contraception as if women mattered", CED, Bombay also "Drugs that can mean the unborn", Sunday, April 11-17, 1982.



representatives from foreign drug companies interested in manufacturing injectable contraceptives. Activists stormed the meeting and demanded a ban on all long acting contraceptives, the withdrawal of government approval for Net-en and giving the public all information on studies on Injectable contraceptives in India. They also objected to the widespread experiments with harmful drugs on Third World Women and demanded that a public enquiry be instituted on injectables and implants.<sup>35</sup>

A different kind of effort was undertaken by 'Stree Shakti Sangathana in Hyderabad, Andhra Pradesh. On the 1st of April 1985, a team of five activists went to a village medical camp at Patancheru which was about to inaugurate a 12-month trial programme on Net-en, when requests to stop the trials met with little response, they procured permission to address fifty women volunteers. The para-medics who talked to the activists said that they had been assigned the task of procuring 20 recruits for the trial from nearby areas. They said that, if they had informed any of these women that they were subjects of an experiment or that there were possible side-effects, no one would have volunteered. The women who had been assembled that day at the PHC were from the poorest class. They told the women activists that the only information they had been given was "injection le lo bachcha nahin hoga" ("Take this injection, you won't get pregnant").<sup>36</sup>

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<sup>35</sup> Pamphlet, Women's Centre and Forum Against Oppression of Women, Bombay, 20 Dec. 1984.

<sup>36</sup> Saheli Report, op. cit., p. 3.

This blatant flouting of the requirement of informed consent was a clear violation of the Helsinki Declaration on medical ethics, to which India is a signatory. It soon became apparent that this was not an isolated incident and unethical trials were being conducted all over the country. For instance, in Jaipur the Sawai Man Singh Medical College issued posters and pamphlets advertising the injectable in a similar way, touting it as a “miracle” solution to unwanted pregnancy. The Stree Shakti Sangathana (Hyderabad) along with Saheli (Delhi) and Chingari (Ahmedabad), as well as five doctors and a journalist filed a writ petition in the Supreme Court. The petition, submitted in 1986 against the ICMR, Ministry of Health and the State of Andhra Pradesh, demanded a halt to Net-en trials, full and complete information about the contraceptive and the appointment of a team to investigate various other issues.

The following are some excerpts from the petition which outline the petitioners objections to the experiments and the threats they pose. They have argued that such experiments violate women’s fundamental rights under Article 21 of our constitution.

According to the World Health Organisation (WHO) reports, the cancer causing effects of Net-en are not fully known. Then, such experimentation means using women as guinea pigs. This is one of the reasons why the drug has not been approved for use in many advanced countries. The WHO reports clearly state that a return to fertility after discontinuation of Net-en has

not been proved. In the Indian context where there is such a high rate of infant mortality and cultural emphasis on motherhood, the potential of possible infertility is an unacceptable risk.

Neten trials are being conducted without the informed consent of participants. They have violated the ICMR's own stated criteria of ethics and also transgressed the Helsinki Declaration on Human Experimentation to which India is a signatory.

The Net-En campaign is an example of a women-and-health action taken up by the women's movement in India. It was the first major women-and-health issue taken up in a concerted way by women's groups in different parts of the country. This was probably the first example of a preventive action launched by the women's movement in one third world country, inspired by information documented by women's groups from other countries.<sup>37</sup>

#### **THE E.P. DRUG CAMPAIGN :**

High Dose Estrogen Progesterone (HDEP) formulations contain the same female hormones as the pill but in a much higher dosage. "In the 1950s they were brought into the market as a treatment for missed periods since they were thought to start menstruation in women whose

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<sup>37</sup> Balasubramanyam, Vimal, "Lessons of the Net-en campaign", paper presented at the National Conference on Women, Health and Reproduction", Bombay, 1986.

periods were delayed and who were not pregnant".<sup>38</sup> By the 1970s the use of the drug became popular not only in a variety of gynecological problems, but also for pregnancy testing. It became an easy alternative to the cumbersome process of performing a urine test for ascertaining pregnancy. Documented evidence since 1967 proved some harmful effects of the drug resulting in an increase in abnormalities, delaying side effects, abortions, still births etc. A study conducted by Dr. Palaniappan in Madras in 1979 found that 31 percent of 52 mothers who gave birth to babies with defects like cleft palates etc. had taken this drug during the early stage of their pregnancy.<sup>39</sup> Even low dose EP drugs are considered unsafe because those containing sex hormones are contraindicated for women who may be pregnant.<sup>40</sup> Despite all these contraindications the misuse of this Drug is rampant. It is easily available over the counter without any prescription. In 1982 it was estimated that 1,80,000 women were likely users of this drug bringing its sales close to Rs 10 crores per year. There were about 200,000 doctors involved in the sale of this drug.<sup>41</sup> On International Women's Day 8 March (1982) women's groups took up the issue of protesting against these harmful drugs. Saheli (Delhi) produced posters for use in awareness raising campaigns. Similar small actions resulted in the creation of literature, articles and strong letters to the newspapers. On March 19, 1982, an order was passed by the ICMR

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<sup>38</sup> Marcellis C & M Shiva, "E.P. Drugs : Unsafe by Any Name in K. McDonnell (ed.) Women in the Pharmaceutical Industry, IOCO, Malaysia.

<sup>39</sup> Ibid.

<sup>40</sup> Prakash, P. "Hormonal Methods of Contraception". Economic and Political Weekly, April 26, 1986.

<sup>41</sup> Balasubramanyan, Vimal, "Drugs that can mean the unborn, Sunday, April 11-17, 1982.

asking drug companies to print warnings: "Not to be used for pregnancy tests and in suspected cases of pregnancy" for the consumer's information. an article in the onlooker published from Madras on the "very high incidence of congenital anomalies consequent to the administration of High Dose EP Combination to pregnant women"<sup>42</sup> generated a great deal of debate and found an echo in parliament. The campaign against HDEP received a good response from the media, the public and activist groups.

### **TRYING TO SAVE THE FEMALE FOETUS; AMNIOCENTESIS AND SEX SELECTION :**

The issue of amniocentesis and sex selection was essentially the initiative of women's group. This issue represents 'the lowest common denominator' for all conscientious individuals and groups, activists and others. Hence, a very broad joint action is possible. Moreover it has a very strong and evident social component which can be understood by lay persons who could be directly involved in the campaign. Finally, the issue of Amniocentesis represents the most blatant and yet the most refined (and hence invisible) atrocities committed over women by the entire range of Sex Determination (S.D.) and Sex-Pre-Selection (S.P.) technologies.<sup>43</sup>

Amniocentesis and sex-selection in India has a very short history.<sup>44</sup> Reproductive Biology was identified as a major thrust area for R & D by the Government of India, as well as the medical research establishments

<sup>42</sup> Anant, R.S., "The E.P. Drug Campaign" Onlooker, June 1988.

<sup>43</sup> Vibhuti Patel 'AMNICENTESIS AND WOMEN'S Movement, paper presented at Indian Association of Women's Studies, Punjab University, Chandigarh, 1-4 Oct. 1986.

<sup>44</sup> Mazumdar Vina, amniocentesis and Sex Selection, Occasional Paper No. 21, 1994. Centre For Women's Development Studies (CWDS), New Delhi.

from the 1960s, as the hysteria about the population crisis began to affect perceptions of the Indian intelligentsia. The All India Institute of Medical Sciences (AIIMS) was one of the major centers of research in this field. The Institute also had a Department of Human Cytogenetics which found it possible to acquire access to some of the new sex selection technology by riding the band-wagon of the population panic. In 1974, the Department started a sample survey with the aid of amniocentesis<sup>45</sup> to detect foetal abnormalities.

When the government in 1974 ran clinical trials on amniocentesis, 11,000 couples volunteered for it. A survey by the All India Institute of Medical Science revealed that the couples' main motivation was to ascertain the sex of the foetus. "The idea that the sex of one's child can be determined before birth and that too at a relatively low cost, has a tantalising appeal in a society as traditionally male dominated as India".<sup>46</sup>

Abortion was legalised by the Medical Termination of Pregnancy (MTP) Act (1971). Though the statement of objectives projected the legislation as an attempt to reduce criminal abortions in unsafe conditions, and maintained that the primary objective of the law was to protect the physical and mental health of women seeking abortion, there was little

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<sup>45</sup> Amniocentesis consists of the removal of about 15 cc of amniotic fluid from inside the amniotic sac, which covers the foetus for testing. It is generally performed during the 14th or 15th week of pregnancy. The test is meant to detect genetic diseases. The mother faces the risks of infection and spontaneous abortion. Abortions following the test are performed in the second trimester and have, at times, been fatal or caused anaemia, forced sterility and mental trauma.

<sup>46</sup> Bhate, Kamaxi, "Sex Determination Tests: A new challenge Before the Indian Women's Movement" paper presented at the 5th International Conference on Women and health, May 22-28, 1987, San Jose, Costa Rica (CWDS).

doubt that in the perception of the medical establishment and of the majority of the general public, it was viewed primarily as an instrument of population control.<sup>47</sup>

The AIIMS tests were eventually stopped by the Indian Council of Medical Research (ICMR). But the advent of the new reproductive technology (NRT) and its fall-out had been noted by some medical entrepreneurs. By 1979 a group of such entrepreneurs set up the 'New Bhandaris' Antenatal Sex Determination Clinic in Amritsar, Punjab. It began to advertise its services openly through the press and handbills distributed in public places, railway compartments etc., one copy of the handbill reached the centre for Women's Development Studies (CWDS) New Delhi in the summer of 1982.<sup>48</sup>

The advertisement referred to daughters as a "liability" to the family and a "threat to the nation", and exhorted expectant parents to avail of the services of the clinic to rid themselves of this danger. "Better Rs 500 now than Rs 5 lakh later" says an advertisement for the amniocentesis test. The centre for Women's Development Studies, Delhi, informed seven national organisations<sup>49</sup> of women which had their headquarters in Delhi.

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<sup>47</sup> Committee on the Status of Women in India (CSWI), Towards Equality, GOI, Ministry of Education and Social Welfare, 1974, p. 86.

<sup>48</sup> Mazumdar Vira, op. cit., p. 3.

<sup>49</sup> The Joint Front included all India Democratic Women's Association, National Federation of Indian Women Mahila Dakshata Samiti, All India Co-ordination Committee of Women workers, YWCA, All India Women's Conference, Joint Women's Programme and the Centre for Women's Development Studies.

In July 1982 a joint meeting convened by these organisations condemned this misuse of scientific technology. After a heated debate, the meeting recommended three lines of action :

- (a) the government was requested to restrict the use of amniocentesis only to teaching and research establishments and to ban its use in private practice.
- (b) the Indian Medical Council was requested to take severe action against members of the medical profession who indulged in such unethical practices, and
- (c) women's organisations and civil rights groups were requested to be vigilant against the spread of this practice for commercial practices.

Present at this meeting was a young woman reporter (Ritambara Shastri) from the United News of India, who had already brought out an excellent investigative report of the New Bhandaris' clinic, the attitude of the staff and the reactions among several patients who had undergone the test as well as abortion. The title of her long report, which came out on the morning of the meeting was "Amniocentesis: A Money Spinner". Virtually everyone at the meeting had read her story, revolted by the account of the brutal display of aborted foetuses in the clinic, several of the speakers demanded a total ban on amniocentesis. A few, however, pleaded that the women's movement should not declare itself opposed to scientific research per se, since it was possible for amniocentesis to play a positive role in the detection of certain sex-specific genetic disorders in unborn children. The real culprits in this crime, in their view, were the medical



personnel who misused science and women's powerlessness to increase their profits.<sup>50</sup>

It was only in 1982 with the visible proliferation of advertisements for sex determinations tests that women's groups, health and Science groups like Lok Vignan Sangathana, VHAI (Voluntary Health Association of India), Medico friends circle and research organisations protested against these tests and several articles appeared in the press against them.<sup>51</sup> But a common platform for more consistent action was formed only in November 1985. The forum against Sex Determination and Sex Pre-Selection (FASDSP) which brought different groups together, at first attempted to create public opinion against these tests and female foeticide. This Bombay based group initiated a signature campaign at the state and national levels.

In April 1986, a sit-in demonstration with posters depicting the test and the necessity of banning it was organised in front of a hospital. A novel morcha of parents and their daughters took to the streets on Children's Day, 14 November, 1986. Some of the banners, flags and postcards read 'Ladki na Ladka Se Kam'. "We too want to live". A Skit was staged with children emphasising equality between the sexes.<sup>52</sup>

There was a constant attempt not to restrict the campaign to a single issue, but to highlight through it the ever growing violence against

<sup>50</sup> Mazumdar Vina, op. cit., p. 3.

<sup>51</sup> Deshpande, Anjali, Open insult of womanhood. *Mainstream*, 22 Oct. 1983, p. 16; Lingam, Lakshmi, Sex detection tests and female foeticide: discrimination before birth. *Indian Journal of Social Work*, Jan. 1991, pp. 13-19.

<sup>52</sup> N. Gandhi N. Shah, op. cit., p. 131.

women. The campaign group was also aware that no law can be effective by itself so, consciousness raising at the local level became a crucial aspect of the campaign. In April 1988, a 15 day long 'Nari Jiwan Sangarsh Yatra' (a march for women's right to live) was organised by women's and other voluntary groups working in slum and worker colonies in Maharashtra.<sup>53</sup>

Health and women's groups had anticipated a ban on all prevailing and future techniques which aided sex determination or sex-pre-selection; instead they got a law which "regulated" these tests through specially appointed bodies. The latter had wide powers to hear and decide on complaints or take them to court. No independent investigation and litigation was permitted. Recognising the power of these bodies, the campaign group asked to be part of the vigilance committee but their request was not acceded to by the government. When the committee finally came into being, the campaign group found that: "Not one person chosen on the committee had ever taken a stand against this practice. In fact, one appointee, a gynaecologist had been doing the test herself for sex determination purpose and had been quoted in the press as having supported the tests to "alleviate the suffering of parents of daughters" (FASDSP Report, 1989). The FASDSP filed public interest litigations<sup>54</sup> to sensitise the judiciary in favour of their campaign objectives and support for a new law. It drafted a private member's Bill with the help of a Senior

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<sup>53</sup> N. Gandhi, N. Shah, *op. cit.*, p. 132.

<sup>54</sup> Public Interest Litigation (PIL) is a type of complaint that can be filed by any concerned citizen against the violation of fundamental rights of a group. The Supreme Court permitted such rights to provide legal remedy to persons who would normally be deprived of the option of coming to the court because of poverty, ignorance or any other social handicap.

Officer from the State Assembly and had it introduced in the State Assembly (Bombay) by three members.<sup>55</sup>

In January 1989, an open letter condemning the test was signed by prominent citizens and sent to the Prime Minister. The campaign was successful in bringing a new law and establishing a systemic linkage between different groups and between sex determination and women's oppression. The new law :

The Maharashtra Regulation on the use of Pre-natal Diagnostic Techniques Act, 1988 is the first legislation of its kind which monitors the use of new modern, medical technology. The Act covers any test or analysis of amniotic fluid, chorionic villi or tissue, and says that all centers, other than those that are registered, are banned from carrying out tests. It further adds that prenatal diagnostic techniques can only be used by government-appointed bodies who have the responsibility of formulating rules and investigating complaints. These provisions make seeking and providing tests etc., illegal and punishable. Doctors are liable for three years imprisonment and Rs 5000 fine. The woman, if compelled, pays Rs 50 or Rs 3000 and is liable to imprisonment for three years.

The Act restricts itself to the prevailing pre-natal techniques and makes no attempt to bring within its purview new developments. More, it does not abolish but merely regulates clinics from doing these tests, and the courts cannot be moved except when the appointed bodies choose to

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<sup>55</sup> Minal Gore, Janata Party, Shyam Wankhede and Sharayu Thakkar from Congress (I).

or if the court fails to respond within 60 days after a complaint has been lodged.

In the Indian situation the pressure to produce a son is so great that there is not much difference between compulsion and voluntary decision. In addition, in most cases the woman is the victim. It seems ridiculous that she should be treated as an offender, however, minimal the fine may be.

While the authorities have the power to search, seize and retain records for as long as may be necessary, health groups and the public have no access to the seized information. This means that the inordinately long time taken in court procedures will very likely render any available material obsolete.

The legislation, though a small victory for public campaigning, has serious limitations and loopholes.<sup>56</sup> This act rather than abolishing all private, genetic laboratories and clinics, provided for registration of these. 'The Act can be criticised for being shortsighted, in the sense that it restricts itself to regulating the existing technologies and techniques. The rapid growth of research in reproduction and the introduction of new diagnostic techniques and sex preselection methods will make the legislation out dated and obsolete in a few years.'<sup>57</sup>

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<sup>56</sup> Jesani, Amar, 'Banning Pre-natal Sex Determination: Scope and Limits of Maharashtra Legislation and Seetalvad, Teesta, Banning Pre-natal Sex Determination. The Issues and Debates, cited in Lingam Lakshmi, op. cit., p. 216.

<sup>57</sup> Lingam, Lakshmi: Sex Detection Tests and Female Foeticide, in Lakshmi Lingam Ed. Understanding Women's Health Issues A Reader, Kali for Women, Delhi.

Several objections have been raised regarding a legal ban on sex-detection tests, for example by Dharma Kumar.<sup>58</sup> In one of her articles she states :

One cannot cure social prejudice merely by Legislation, especially in countries like India where the governmental machinery is weak and corruption rampant ... Is female infanticide preferable to female foeticide? Instead of bringing more unwanted girls into the world, surely it would be better to improve the lives and status of those who are born, Banning Amniocentesis clinics will be ineffective. It will choke off a powerful method of lowering the birth rate without coercion.

In response to Dharma Kumar's views, Vibhuti Patel<sup>59</sup> argues :

Yes, we are aware of this. But, at the same time, legislation banning sex-detection tests would definitely take away the respectability attached to this scientific advancement aggressively advocated by our doctors with crude anti-women advertisements. Because Indian women are ill-treated or are forced to commit Sati, why not kill them before they are born? ... Is not female foeticide itself a coercion?

Curing social prejudices is very important, but it is not possible of a parallel practice of annihilating women exists.

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<sup>58</sup> Kumar, Dharma, 'Ban on Sex-test Clinics Unwise', The times of India, 9 Dec, 1988, Bombay.

<sup>59</sup> Patel Vibhuti, 'Sex Tests Endanger Women's Rights', The Times of India, Jan. 14, 1989.

### **The Politics of Reproduction :**

Implicit in the various campaigns on women and health was the beginning of a dialogue and understanding of women, reproduction and choice. Most women-rejected the governments neo-Malthusian vision of a population bomb slowly ticking towards doom and ecological catastrophe.<sup>80</sup>

Women and other groups have criticised and consistently opposed the "population bomb" hysteria and the alarm over depletion of natural resources. Rather, the problem is one of concentration of resources in the hands of a few. However, opposition to neo-malthusian views does not mean that women's groups have rejected family planning, rather, they perceive the need for birth control and family planning in terms of women's choice and the right to decide the number of children they want as well as the method of contraception they would like to use. "Family Planning should be able to free women" asserted women's groups.

The concept of reproductive freedom which has become synonymous with right of choice has a universal and popular appeal, an easy acceptability within the women's movement. Some of the popular slogans related to women's reproductive rights were -

"The government cannot impose family planning on women. There should be a ban on dangerous drugs like high dose EP drugs and Net-en, women should be able to decide what they want". (Janwadi Mahila Samiti, New Delhi).

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<sup>80</sup> Cited in N. Gandhi N. Shah, op. cit., p. 134.

"We feel it is a woman's right to have control over the size of the family". (Report of the Committee on the Status of Women).

"Knowledge and availability of birth control measures is a matter of women's rights because women should be allowed to govern their own fertility". (Manishe Gupta, 'Editorial Perspective', *Socialist Health Review*, Vol. 1, No. 4, March 1984).

The concept of the right to reproductive freedom draws on three bases shaped by Liberalism, Marxism and biological arguments.<sup>61</sup> When based on the liberal notion of individual right, reproductive freedom is seen as a rejection of physical abuse by invasive reproductive technology, by the State, family pressure or religious coercion and as an assertion of self determination. By linking individual right to property and to one's body, it is stressed that primarily and ultimately the body is the concern of the individual and not anyone else. If the concept of reproductive or a choice is based on individual right – that is, women should have the right to decide whether they want children, or the number of children and the nature of contraception because they own their bodies - then it becomes difficult to argue against sex-selection tests such as the amniocentesis test. After all, it is said that women themselves seek this test and abort to decide the sex of their child. If the right to abortion is denied to women on the basis of gender (one can abort when one wants to but not if the foetus is female), is not women's reproductive freedom being violated?

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<sup>61</sup> Petchesky, Rosalind P. "Reproductive Freedom: Beyond a Woman's Right to Choose" paper presented at a conference on "The Second Sex", Sept. 29, 1989, New York. Cited in N. Gandhi N Shah, *op. cit.*, p. 136.

The Forum Against Sex Determination and Sex Preselection (FASDSP) calls for a ban on all technologies which could be used for sex preselection. Nwedita Menon aptly comments, "What does it mean for feminist democratic politics to demand legal and bureaucratic control over entire area of science and knowledge".<sup>62</sup>

"If abortion is a right over one's body, how are feminists to deny this right to women when it comes to the selective abortion of female foetuses? The FADSP's position is that women who make this choice are constrained by social and family pressures and are not really exercising their free will. Why is it assumed that only when a woman chooses to abort a female foetus she is not acting on her 'own' will?"<sup>63</sup>

The right to life campaigners from the catholic community made common cause with the Forum. Against Sex Determination and Sex Pre-Selection group, joined their demonstrations and demanded a ban on amniocentesis test and sex determination to point out that it is symptomatic of the problem of abortion. 'Once it is permitted to kill some foetuses for some reasons, then why is it not permitted to kill all for any reason ... perhaps from the undeniable truth that it is wrong to kill a baby simply because she is a girl will emerge the larger truth that it is wrong to kill a baby at all'.<sup>64</sup> 'The right to reproductive freedom is neither abstract or

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<sup>62</sup> Menon Nivedita Rights, Law and Feminist Politics, p. 24 in Swapna Mukhopadhyay Ed. In the Name of Justice Women and Law in Society, Manohar 1998.

<sup>63</sup> Ibid.

<sup>64</sup> McGowan, Jo, "In India, they abort females", Newsweek (USA), 13 Feb. 1989. Cited in N. Gandhi N. Shah, op. cit., p. 137.



unqualified nor can it be implemented at the cost of other rights and people. Women's choices in exercising their reproductive rights too have to be compatible with the principles of gender justice and equality.<sup>65</sup> In India especially, reproductive rights and choices exercised by women are very seldom independent. Women's self worth and value is usually dependent on their reproductive functions. Women themselves go to great lengths to ensure a number of children as a result of the pressure of the family and the dominant patriarchal ideology.

"What is perhaps most disturbing about the concept of right over one's own body is its inherent assumption of the body as property".<sup>66</sup> "Implicitly we are demanding that a woman should own individually the reproductive factory she is carrying within her own body".<sup>67</sup>

'The biology based argument very simply puts down' "nature" and women's bodies as the reason for women's rights over reproduction. Together the two conceptual bases equate women's bodies to their reproductive functions in a way which denies them any other productive role. At best, it relates women's work to tasks around reproductive like child care and nurturing which reinforce the sexual division of labour in society.

'The fact that reproduction is not only natural but mediated by social and material conditions has been the contribution of the Marxists,

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<sup>65</sup> N Gandhi N. Shah, op. cit., p. 138.

<sup>66</sup> N Gandhi N. Shah, op. cit., p. 140.

<sup>67</sup> Akhtar Faride, "On the Question of Reproductive Right: A personal Reflection Women's NGO Consultation Women's Decade in Review, New Delhi, April 3-4, 1985.

Mahmood Mamdani's<sup>68</sup> analysis of the social relations of reproduction shows how colonisation introduced an uneven capitalist development in the Third World countries which retained the family as the unit of production. The nature of agriculture, labour intensive production and the hierarchical relation within the family which help establish a control over children's labour are extremely conducive to weighing the scales in favour of more children. Marxist analysis has shown that the western advanced nations' fear of a population explosion masks the reality of unequal distribution of resources and exploitation of the poor and working class. Western capitalist countries have systematically linked development aid with family planning aid.<sup>69</sup> International agencies like the United Nations, the Red Cross, The International Monetary Fund have, through their experts, propagated different schemes and methods of family planning. In consonance with them are the multi-national pharmaceutical companies who produce a range of contraceptive for an extremely profitable market: millions of women in the reproductive age.<sup>70</sup>

Apart from the three major campaign against high dose E.P. drugs, Net-en and Amniocentesis tests, there have been hundreds of small but relevant protests against the manipulation and coercion of people under the family planning programme for better facilities and follow up care, in both urban and rural areas, for example, in Sevapuri, Uttar Pradesh

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<sup>68</sup> Mamdani Mahmood, *The ideology of Population Control*, cited in N. Gandhi N Shah, op. cit., p. 141.

<sup>69</sup> Baxamusa, Ramala, "The Price Of Assistance" *Socialist Health Review*, Vol. 1, No. 4, Bombay. Cited in N Gandhi N. Shah, op. cit., p. 143.

<sup>70</sup> Ibid.

activists of the Mahila Mukti Morcha followed up cases of failure in the family planning operations and other complications for women. They demanded better facilities for child delivery and availability of medicines. Women's Voice, Bangalore<sup>71</sup> organised a demonstration when they discovered that some of their members had been inserted IUDs without their knowledge. SEARCH<sup>72</sup>, a voluntary organisation working with tribals in Maharashtra submitted a memorandum signed by a large number of tribals against the decision of the government to charge heavy fees in government hospitals.

Many women's groups have taken up the task of educating women towards their reproductive rights. Posters, exhibitions and the use of drama have been found to be effective methods for health communication.<sup>73</sup> One of the first attempts was in 1980 by Lok Vignan Sangathana to prepare a 'Women and Health' exhibition which was shown to the tribals of Shahada and then later taken to many different parts of Maharashtra. In Delhi, women from different groups such as Action India, Jagori and others developed an exhibition which started with eight posters and gradually expanded to 45 to include different aspects of the body, the process of conception, types of contraception, etc. The exhibition has been shown in many areas to a population ranging from illiterate slum, rural to middle class woman. The Forum Against Oppression of Women,

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<sup>71</sup> Women's Voice, 67, 2nd Floor, Bluemoon Complex, M.G. Road, Bangalore, 560001, Karnataka.

<sup>72</sup> N Gandhi N. Shah, op. cit., p. 147.

<sup>73</sup> Seheli a Non governmental organisation in New Delhi launched a massive campaign against harmful injectable hormones and also for Reproductive Rights and Health for Women.

Bombay prepared a big cut out of a woman's body with its different systems separately emphasised. It also showed the relationship of each of the systems with common diseases, prevailing attitudes of women and with women's work and environment. CHETNA, a health organisation in Gujarat has used different educative methods to reach out to older children who look after their younger siblings. They have also developed an education kit about anaemia and used songs directed at mothers-in-law who control the distribution of food in the households. Activists of the Rural Women's Liberation Movement (RWCM) decided to go into the area of nutrition and cleanliness. In one region women did not bathe every day, not because of any customary restriction, but simply because there was a shortage of water and they could not afford to spend time fetching it after work. The focus of their health education was to explain the value of particular foods, expose the irrationality of rejecting these due to superstitious beliefs. Methods of cleanliness was also discussed, along with this, issues of water scarcity and sexual division of labour were also raised.

A considerable amount of data and theoretical material have been generated during the U.N.'s Women Decade 1975-85 which has made a significant contribution to the movement's understanding of the question of women and health.<sup>74</sup> These studies have been able to point out the distinctive nature of the health problems faced by women. The report 'Towards Equality'<sup>75</sup> prepared by the committee on the status of women

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<sup>74</sup> Dandekar, Kumudini, "Why have the proportion of women in India's Population been declining". Economic and Political Weekly, Vol. X, Oct. 1975.

<sup>75</sup> CSWI Report, op. cit.

(1974) played an important role in establishing this specificity. It placed the low status of women in the context of their overall oppression. The analysis of sex-wise data on death rates, life expectancy, and morbidity patterns have pointed to the social rather than biological factors responsible for poor health.

The campaign for women's health' suggests that there are different view points from which women's groups perceive the question of health. Nandita Gandhi carried out an in-detail survey and interviews with health activists and concludes, "None of the organisations that we interviewed looked at health programmes as only humanitarian, social services. Rather, there are many which have fused the voluntary provision of health services to the concept of individual right. Such groups demand better health services and facilities, educate people on health care and protest against any use of coercive tactics because they believe that health care is the right of every citizen which should be fought for if it is not provided by the government. For their health becomes an issue only when the government defaults or uses pressure on people. These women health groups are mainly concerned about and involved in local level actions and are among the most dedicated in setting up clinics, hospitals and providing medical facilities through health workers. Because their priority centers around the demand for and provision of medical services, they are less keen to be involved in long term struggles or national campaigns."<sup>78</sup>

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<sup>78</sup> N Gandhi N. Shah, op. cit., p. 152.

There are some health activists who argue that even with good health services women may neglect their health because they have internalised self negation and sacrifice for the family to the extent that they consistently eat less, always overstrain themselves, do not take advantage of medical facilities etc. If husbands and sons get better quantities of food it is because the wives deliberately give themselves and their daughters less. This internalisation of their own oppression holds line for all areas of women's lives. Wife beating is still rationalised as one's fate or an aspect of men's masculinity but it is also seen as unjust degrading and violent. Women often perceive their body as an instrument for wifehood, motherhood and care of the family. This perception affects the relationship of women to their bodies. In short, the argument is that women are socialized in a manner in which they do not perceive health as a right to be cared for in their own individual interest. The "socialisation" argument questions the patriarchal grip on the minds of women and works towards changing it through education and rational persuasion.

Some health groups trace the reason for ill health squarely to the existing socio-economic and political set up. Women and men will be healthy they argue, if they have access to housing, sanitation, good, cheap food, clean water etc, as well as good wages, and a reasonable standard of living. Without the establishment of these pre-conditions it is futile to speak of health, health problems and a strategy to improve the health of the people.

The All India Democratic Women's Association traces the reason for the deteriorating health status of women to :

... since they are doubly exploited in the household and in the factory ... malnutrition caused by poverty, overwork, repeated pregnancies, low educational levels ... dumping drugs banned in the west in the Indian market ... dangerous policies pursued by the multinationals (as in<sup>77</sup> Bhopal (gas tragedy) and unless radical steps for providing health centers, creches, maternal and child care centers etc., are taken, the women will continue to suffer. The economic improvement of the standard of living of the common people is the real need of the hour.<sup>77</sup>

It is to the credit of the efforts made by the women's movement that a more women-oriented analysis is emerging which attempts to conceptualise the problem of health without reducing it to the specific disability or diseases suffered by women.

In the future, health activists will have to seriously grapple with the conceptual tensions and dilemmas which have emerged from their campaigns. Most of their campaigns have been around reproduction: freedom to decide the number of children, efficient health care for pregnant women 'Safe contraception and female foeticide. Education information collection and experimentation for alternatives is mainly concerned with women's fertility.

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<sup>77</sup> Women and Violence, AIDWA Publication Series, 1998.

Health activists have severely criticised health and family planning programmes of the state which hold women's health as synonymous with their reproductive functions. Yet their campaigns have not been able to break away from reacting to these programmes nor have they been able to initiate others which present a total picture of women's campaign into initiating some thinking on the uses and abuses of medical technology. The women groups in the campaign against injectable contraceptives realised that they could not challenge female foeticide without going into reproductive technology and in general confronting technology and the prevalent belief in its almost "magical" remedial powers. The report of the workshop on women, health and reproduction organised by Shakti, Bombay says, "When we talk about being anti-amniocentesis, we are told that we are anti-science and anti-development. Therefore we have to re-define what we mean by development in Science, development of technology, what is its use and misuse, who controls technology?"<sup>78</sup> These are issues with which the women's movement has to confront.

The contribution of the women's movement can be seen in the women's health movement gaining momentum. There is a more rigorous attempt at net working between groups interested in the issue of health and in organising meetings and conferences. Women groups believe that coercion combined with lack of information creates a situation that is ripe for abuse of human rights.

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<sup>78</sup> Bhate, Kamaxi Ed. In Search of Our Bodies, Shakti, Bombay, 1987.



The drafting of a population policy by a committee set up by the Indian Government under the Chairmanship of Ms Swaminathan as a prelude to the UN Conference on Population and Development (ICPD), Cairo 1993, generated a lot of debate on the need to have a sound people-centred development policy rather than a population policy. Women's organisations in Delhi played a critical role in publicising the proposals and initiating a debate on the whole issue of population control.

In the years preceding the Cairo conference, women's groups were networking to reshape population agendas especially in the Third World Countries. Development issues were sought to be placed at priority. Governments were pressurised to depart from the 'demographic imperative language' and accommodate the women's perspectives on sexual and reproductive health; link population and consumption patterns and address the issue of male responsibility in reproduction and contraception.<sup>79</sup>

The Program of Action of the U.N. International Conference on Population and Development (ICPD) 1994 endorsed by the Government of India is to a very large extent the outcome of the efforts made by women's groups. The program proclaims.

"States should take all appropriate measures to ensure, on a basis of equality of men and women, universal access to health care services, including those related to reproductive health care, which includes family planning and sexual health ... and provide the widest range of

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<sup>79</sup> Reproductive Health Policy: Rhetoric Versus Reality. a Saheli Report, N. Delhi, p.32.

reproductive health care services without any form of coercion. All couples and individuals have the basic right to decide freely and responsibly the number and spacing of their children and to have the information, education and means to do so". At various International Forums, the Government of India is constrained to demonstrate its commitment to women's rights.<sup>80</sup> This shaping of population agendas in International forums is a significant contribution of the women's movement in India.

As regards the future strategy of the women's movement on Health Issues is concerned Jamuna Ramakrishna reflecting on the future strategy of the women's Health Movement states, "In the past, the women's movement has spoken against policies and programmes that are contrary to the interests and well-being of women. Now there is need to move out of negative, reactive paradigms and stances to positive ones. We must demand low-cost safe, traditional contraception. We recognise the dangers of positing these matters as women's issues which have been increasingly coopted by the establishment. For instance, the demand for choice in contraceptive methods has been used as a justification to promote contraceptive technologies that are known to be harmful, especially to poor women who are undernourished. We need to articulate our demand for safe contraception and universal health care in the strongest possible terms, that is, not to keep positioning ourselves as being against something but to position ourselves as being for something,

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<sup>80</sup> Details of the United Nation International Conference on Population and Development ICPD Cairo September 1994 in The United Nations and The Advancement of Women 1945-1996, Department of Public Information, United Nations, New York.

to say what we want rather than what we don't want even terminology such as 'population control' is loaded, we should coin our own terms. We should demand a women's health policy rather than a population policy, we should demand that men take responsibility for contraception and for the prevention of AIDS. It is important to net work on these issues with like-minded organisations, and to develop broad-based support for alternative approaches and solutions".<sup>81</sup>

The Health campaigns of the contemporary women's movement have without doubt determined the agendas of the Indian State. It has moved away from the strident population control agenda of the 1960s and 1970s to the more expensive notions of reproductive health and reproductive rights what has this change actually meant? Formally, at least, the approach aims to be broader, more client-centered and quality oriented, one which seeks to address the needs of all groups of girls and women for contraception, abortion, safe motherhood, sexually transmitted diseases and other related issues. At one level this can be seen as the success of the women's movement in influencing the agenda on women's health.<sup>82</sup> However, Imrana Qadeer is of the view that, 'The Reproductive Health agenda of the women's movement has limited the issue of women's health to one service delivery and quality while evading the structural issues of inequality and discrimination'.<sup>83</sup>

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<sup>81</sup> Women in India: Reflecting on our History Shaping Our Future. Proceedings of a Consultation on Gender & Development Jointly organised by CWDS and HIVOS, Bangalore, p. 26.

<sup>82</sup> Viswanath Kalpana, Whose body, whose health? Seminar 505, September 2001, pp. 36-40.

<sup>83</sup> Qadeer Imrana, 'Reproductive Health: A Public Health Perspective' Economic and Political Weekly, 10 October 1998.

The post Women's Decade (1975-85) has seen shifts in the perceptions of health activists. The condemnation of all contraceptive technologies as provider controlled, long lasting and invasive was predominant in the eighties. The globalised 90s witnessed the emergence of new political formations with a bigger role being played by the NGO sector alongside international donor and bilateral agencies in setting national agendas. If the earlier women's groups were more confrontational in their stance, the strategy now involves dialogue, negotiation and partnership, in addition to confrontation.<sup>84</sup>

The greatest strength of the women's health movement lies in its ability to dialogue with different sets of actors. Women's groups have been interacting with the state drug regulatory authorities, ICMR, doctors and scientists - using such means as the media and public protests. The greater acceptance of women's health advocates in this arena has been facilitated by two factors: first, they are seen as representing the voice of users and second, their technical competence and ability to dialogue with different sets of actors. It is because of the limited success of confrontationists politics that has prompted many women's groups and activists into working with the state and international agencies in order to impact programmes and projects.

Finally, it is because of the efforts of the women's movement that terms such as reproductive rights and Reproductive Health have gained significance. One of the most hopeful signs, is that women are beginning

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<sup>84</sup> Viswanath Kalbana. *op. cit.*, p. 38.

to talk about an alternative vision of health which touches every part of life: the nature of work, relationships in society, politics and culture'.<sup>85</sup>

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<sup>85</sup> N. Gandhi N Shah, *op. cit.*, p. 159.

## **CHAPTER 5**

### **WOMEN'S MOVEMENT AND POLITICS OF RELIGIOUS PERSONAL LAWS**

## **WOMEN'S MOVEMENT AND POLITICS OF RELIGIOUS PERSONAL LAWS**

Women's organisations had come of age by 1934. Begun between 1917 and 1927, the women's Indian Association (WIA), All-India Women's conference (AIWC) and National Council of Women in India (NCWI) had sought to bring women together to advance their status through education, social reform and political action.<sup>1</sup> As organized women gained experience in the public arena, they became more aware of their dependent status.

During her presidency of the All India Women's Conference in 1931, Dr. Muthulakshmi Reddy urged that steps be taken "to amend the present state of Hindu Law relating to women to make it equitable" and the resolution was unanimously passed.<sup>2</sup>

In 1934 the All India Women's Conference, Legal Secretary Renuka Ray in a pamphlet entitled 'Legal Disabilities of Indian Women: A plea for a commission of Enquiry', argued in favour of new laws for all women, regardless of community. The legal position of Indian women was "one of the most inequitable in the world today", wrote Renuka Ray. Ray wanted

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<sup>1</sup> Geraldine Forbes, *In Pursuit Of Justice: Women's Organisations and Legal Reform*, *Samya Shakti* (A Journal of Women's Studies), Vol. 1, No. 2, 1984 (CWDS, New Delhi).

<sup>2</sup> Basu, Apama and Bharati Ray, *Women's Struggle: A History of the All India Women's Conference 1927-1990*, Manohar, Delhi, 1990, p. 46.

new personal and family law that would make women independent and fully equipped to participate in public life.<sup>3</sup>

A decade later i.e. in 1941, Malinibai Sukthankar of the National Council of Women in India, in her report on the legal status of Indian women, voiced strong support for the range of bills relating to law and marriage due to come before the legislature and went further to suggest.

'The next and equally important item for the conference is to make a comparative study of the laws of different communities relating to women with a view to evolve a uniform legal basis for women irrespective of their creed, social position and faith.'<sup>4</sup>

'Between the time of the rather cautious recommendation by Dr. Muthulakshmi Reddy that the Hindu Code be reformed and Sukhtankar's bolder plea for a Uniform Civil Code, there lay a decade of legislative initiative and bitter debate, which had convinced Indian feminists that the retention of a plurality of personal laws in the name of "protecting religion" was unambiguously detrimental to the social and legal status of women.'<sup>5</sup>

'Personal Laws' referred to a range of religion based family laws governing marriage, separation, inheritance, maintenance and adoption, which vitally affected the status of all Indian women even as they were

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<sup>3</sup> Renuka Ray: 'Legal Disabilities of Indian Women' (AIWC Files 84). Cited in Geraldine Forbes. *Women in Modern India*. The New Cambridge History of India, Cambridge University Press, Indian Edition, 1996, p. 113.

<sup>4</sup> Report of the Conference on the Legal Status of Indian Women, National Council of Women in India, Bombay, 1943, pp. 15-16.

<sup>5</sup> Janaki Nair, *Women and Law in Colonial India, A Social History*, Kali for Women, 1996, p. 180.



wholly instituted and implemented by men. Whatever the intentions of framers of such laws may have been the effect of this set of laws was to define control, and, in most cases, limit, the rights of women within and outside families.<sup>6</sup>

In the process of codifying Hindu and Muslim Law, the sphere of family laws was marked off as "religious" and therefore off limits to the colonial administrator who especially in the early stages of colonial rule, feared the resentment of the colonised people. Although the British rulers found the courage to legally challenge some of the social practices of Indians in the early part of the nineteenth century<sup>7</sup>, by the end of that century, such intervention was far more timid.

The demand for codification of law was being articulated by the women's movement. By 1934, the All India Women's Conference even passed a resolution advocating the establishment of an unofficial committee to investigate and reform Hindu Law.<sup>8</sup> By 1940, this was reframed as a demand for a Uniform Civil Code.<sup>9</sup>

If the first major struggle after independence is any indication, entrenched patriarchal interests were extremely hostile to translating

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<sup>6</sup> Ibid.

<sup>7</sup> Prohibition of Sati 1829, Hindu Widow Remarriage Act 1856, Age of Consent Bills were some of the measures. However, after the revolt of 1857, the colonial administrators followed a policy of Caution, Social Laissezfaire as the lesson learnt during the revolt of 1857 was that a policy of social reform was not only dangerous but wreckless in the extreme as this was identified as one of the causes of the revolt.

<sup>8</sup> Everett Jana Matson, 'Women and Social Change in India', Heritage Publishers, 1978, p. 148.

<sup>9</sup> Ibid., p. 149.

equality of women before law into a constitutional reality. Thus the constituent assembly, which assured women that they would not be discriminated against on grounds of sex, nevertheless provided exactly such a possibility in the name of religious freedom, which allowed for the freedom of each religion to retain its personal laws.<sup>10</sup> B.R. Ambedkar as a framer of the Constitution protested in vain against the retention of personal laws:

‘The religious conceptions of this country are so vast that they cover every aspect of life from birth to death. There is nothing that is not religious and if personal law is to be saved, I am sure about it in social matters we shall come to a stand still ... After all, what are we having this liberty for ? We are having this liberty to reform our social system which is so full of inequalities, discrimination and other things which conflict with our fundamental rights’.<sup>11</sup>

Women in Parliament, notably Raj Kumari Amrit Kaur protested vociferously,

“Everyone is aware how many evil practices which one would like to abolish, are carried on in the name of religion, e.g. purdah, polygamy, caste disabilities, animal sacrifice dedication of girls to temples, to mention a few.”<sup>12</sup>

With M.R. Masani and Hansa Mehta, Amrit Kaur insisted on a uniform Civil code saying that “one of the factors that has kept India back from advancing to nationhood has been the existence of personal laws

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<sup>10</sup> Janaki Nair, *op. cit.*, p. 219.

<sup>11</sup> P.C. Chatterjee, *Secular Values for India*, Lola Chatterji, New Delhi, 1984, p. 13.

<sup>12</sup> Everett, *op. cit.*, p. 160.

'based on religion which keep the nation divided into water tight compartments in many aspects of life'<sup>13</sup>, yet that was made only a Directive Principle of State Policy and remains non-justifiable.

'The Independent Indian State, despite its brave words about justice to all its citizens, does not appear to have displayed a will to ensure equality and justice to women citizens. The reluctance has sometimes been expressed in terms of actual hostility, but more often opposition to bills amending the position of women has taken the form of foot dragging and discussion of unnecessary clauses which considerably delay and dilute the sharpest formulations.'<sup>14</sup>

#### Debate on the Hindu Code Bill :

'The actions of the nation state in legislating on and codifying personal laws of the Hindu majority was at odds with its commitment to secularism. On the one hand, Hindu society lacked the institutions which could bring about reform of personal laws, necessitating the intervention of the state; yet on the other, instituting a Uniform Civil Code would impinge on the religious rights of the minority communities. This is among the paradoxes that contribute to the crisis of the Indian nation – State today, a state that is committed to formal equality nevertheless legislates on matters of religion of the dominant Hindu majority.'<sup>15</sup>

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<sup>13</sup> Cited in Haksar Nandita, *Women and Justice for All* in A.R. Desai edited *Women's Liberation and Politics of Religious Personal Laws in India*. C.G. Shah Memorial Trust Publication, Bombay, 1986, p. 6.

<sup>14</sup> Janaki Nair, *op. cit.*, pp. 219-220.

<sup>15</sup> Partha Chatterjee, "Secularism and Toleration". *Economic and Political Weekly*, July 9, 1994, pp. 1768-83.

After independence the Congress made certain attempts to ratify their promises to women, declaring the equality of men and women in the constitution, and setting up various administrative bodies for the creation of opportunities for women. Yet these attempts were at best partial, and to many the years after independence seemed the site of a severe setback for feminists.<sup>16</sup>

“Demand for a reformed uniform and all encompassing codification of Hindu Personal laws had been first raised by the feminists in the thirties (1930).<sup>17</sup>

A dramatic opportunity to amend the rights of women in the Hindu family emerged in the early days of independence itself, and soon turned into a bitter contentious debate. Based on the recommendations of a committee appointed in 1944 under the chairmanship of B.N. Rau, a Hindu Code Bill was introduced in parliament and debated on the floor of the House in 1948.

A Hindu Code Bill was introduced in the Parliament and debated on the floor of the House in 1948. No further action was taken until after independence, when another committee was appointed under the chairmanship of B.R. Ambedkar, the then Law Minister. The Bill produced by this committee raised the age of consent and marriage, gave women the right to divorce, maintenance and inheritance, and treated dowry as

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<sup>16</sup> Radha Kumar, *The History of Doing, Kali for Women*, 1993, p. 97.

<sup>17</sup> All India women's Conference (AIWC), published in 1933, 'The Legal disabilities of Hindu women', Renuka Ray published in pamphlet entitled, 'Legal Disabilities of Indian Women: Plea for a Commission of Enquiry.

'Stridhan'. Though women's group and social reformers welcomed the Bill, and the majority of Congressmen supported it the opposition came from men such as Rajendra Prasad and Vallabhbhai Patel, independent Hindu fundamentalists, the Hindu Mahasabha, some Muslims and even some women Parliamentarians.<sup>18</sup> The clause that stipulated chastity as a condition for alimony invited the wrath of some women members such as Sucheta Kriplani.<sup>19</sup>

The supporters of the Hindu Code Bill had described it as a major step towards 'social revolution'. One that would eliminate ... all disparity in the rights of men and women in matters of marriage, succession and adoption. More important, the Bill was seen as a measure that would pave the way for a uniform Civil Code. It was seen as an attempt to show that the Hindu Personal Law was superior to the laws of other minority communities and should therefore be emulated by them.<sup>20</sup> However, most of these expectations have remained unfulfilled. Women governed by the reformed Hindu Law continue to feel no less aggrieved than Muslim women on account of the fact that at the ground level, especially in rural areas, things have not changed substantially despite the fancy promise of equality given to them at the time of the reform of the Hindu Law. A good indicator is the continuing and growing disinheritance of women, especially with regard to property in land, housing and other income

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<sup>18</sup> Cited in Janaki Nair, op. cit., p. 223. Copy of the Resolutions passed at the all India Anti-Hindu-Code Convention held at Jaipur on the 16th, 17th and 18th December 1948 in Appendix. ~~18~~

<sup>19</sup> Ibid.

<sup>20</sup> Kishwar Madhu, *Breaking the Statemate: Uniform Civil Code versus Personal Law*. Manushi No. 77, July-Aug. 1991.

generating forms of wealth. Despite the existence of the Hindu Succession Act since 1956 and its projection as the key to improving women's status, inheritance rights continue to elude most women. It is the same story with Divorce, Maintenance and Custody Laws.<sup>21</sup>

It was only in 1955-56 when sections of the Hindu Code Bill were passed as four different Acts: The Hindu Marriage Act<sup>22</sup>, the Hindu Succession Act<sup>23</sup>, the Hindu Minority and Guardianship Act<sup>24</sup>, and the Hindu Adoption and Maintenance Act<sup>25</sup>.

The committee on the status of Women in India (CSWI) in its report stated "The Absence of a Uniform Civil Code in the last quarter of the 20th Century, 27 years after independence, is an incongruity that cannot be justified with all the emphasis that is place on Secularism, Science and Modernisation. The continuance of various personal laws which accept discrimination between men and women violate the fundamental rights, and the preamble to the constitution which promises to secure to all citizens equality of status and is against the spirit of national integration and secularism ... we, therefore, recommend expeditious implementation of this constitutional directive by the adoption of a Uniform Civil Code."<sup>26</sup>

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<sup>21</sup> Ibid. Also Kishwar Madhu, *The Codified Hindu Law*, Economic and Political Weekly, Vol. XXIV, No. 33, 13 Aug. 1994.

<sup>22</sup> The Hindu Marriage Act, 1955. Lucknow: Eastern Book, 1990.

<sup>23</sup> The Hindu Succession Act, 1956 (Act No. 30 of 1956), Delhi: Delhi Law House, 1990.

<sup>24</sup> The Hindu Minority and Guardianship Act, 1956, Delhi: Delhi Law House, 1990.

<sup>25</sup> The Hindu Adoption and Maintenance Act, 1956 (Act No. 78 of 1956), Delhi: Delhi Law House, 1990.

<sup>26</sup> Towards Equality, Report of The Committee on the Status of Women in India, Government of India, Deptt. of Social Welfare, New Delhi, 1974, p. 142.

However, even after more than five decades since India became independent we do not have a Uniform Civil Code.

Not surprisingly, both the pre- and post-Independence women's movements have seen the family and home as the single most important structure ordering women's lives.<sup>27</sup> In the late seventies women activists had focussed on the dowry form as an expression of the subordination of women within the family, and had seen dowry-murder as one of the most brutal manifestations of violence against women. By the early eighties attempts to analyse the relationship of women to and within the family had led to examining the codification of women's rights in marriage, divorce, property, maintenance etc. as most family law is differentiated on the basis of religion as well as community. This entailed investigation into different personal laws.

The issue of personal law became especially controversial for the women's movement in 1985 with the Shah Bano Case<sup>28</sup>, 'The Shah Bano controversy is easily the most historic event in post-independence years not only for Muslim women, but for all Indian women. There has been no single event concerning the status of a woman before law which has produced more contentious debates, divided loyalties, and serious revisions of long held assumptions as the Shah Bano judgement of the Supreme Court.<sup>29</sup> In addition to illuminating the very critical and ongoing

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<sup>27</sup> Omvedt, G., *The roots of Violence*, Kali For Women, New Delhi, 1990, p. 35.

<sup>28</sup> Jaising Indira, Ed. *Justice For women, Personal Laws, Women's Rights and Law Reform*. The Other India Press, Mapusa, Goa, pp. 1-37.

<sup>29</sup> Supreme Court, Y.V. Chandra Chud, CJ, D.A. Desai, O. Chinnappa Reddy, E.S. Venkataramiah, and Ranganath Misra, JJ, Mohd. ahmed Khan V/s Shah Bano Begum and others.

struggle between the freedom of women and the freedom of religious minorities, the acrimony over the Shah Bano Case has also revealed the limits within which women may seek legal remedies, without adequate access to political power, such legal remedies may be rendered useless. Finally, the parliamentary reversal of the Shah Bano verdict has had the most enduring consequences for the status of women, particularly minority women, as citizens of this country.<sup>30</sup>

On 23 April 1985, a five member Constitution Bench of the Supreme Court led by Chief Justice Chandrachud confirmed the judgement of the Bhopal High Court which awarded Shah Bano, a 75 year old divorced Muslim woman, a sum of Rs 179.10 per month as maintenance from her husband, Mohammed Ahmed Khan. The latter's appeal against the High Court award of maintenance under Section 125<sup>31</sup> of the Criminal Procedure Code (Cr.P.C.) was therefore struck down. The Supreme Court judgement was based on two earlier applications of the Section 125 of the Cr.P.C. to Muslims: Bai Tahira Vs. Ali Hussain Fidaalli Chotia (1979) and Faizul Nabi Vs. Khader Vali (1980).<sup>32</sup>

Section 125 of the Cr.P.C. is "an order for maintenance for wives, children and parents: "It says further that "If any person having sufficient

<sup>30</sup> Janaki Nair, op. cit., p. 230. also Asghar Ali Engineer Ed., 'The Shah Bano Controversy', Orient Longman, Hyderabad, 1987. .

<sup>31</sup> Section 125 of the Code of Criminal Procedure which deals with the right of maintenance reads thus:- "Order for maintenance of wives, children and parents".

125(1) If any person having sufficient means neglects or refuses to maintain -

(a) his wife, unable to maintain herself, (b) a magistrate of the first class may upon proof of such neglect or refusal, order such person to make a monthly allowance for the maintenance of his wife ..., at such monthly rate not exceeding five hundred rupees on the whole, as such Magistrate thinks fit ...

<sup>32</sup> Cited in women and the Law 11, Ed. Christine Chorine Mihir Desai Colin Gonsalves, Socio-legal Information Centre, Bombay, 1999.



means neglects or refuses to maintain his wife, children or parents in need, a magistrate may upon proof of such neglect or refusal, order such a person to make a monthly allowance for maintenance ... at such monthly rate not exceeding five hundred rupees on the whole".

Shah Bano, who was seventy five years old with a marriage which was half a century old asked for the maximum of Rs 500 per month as maintenance. Shah Bano's plea was that she was old and could not work to support herself. In other words, under section 125 she had to show that she was destitute in order to claim support from her husband.

While Shah Bano's application was still pending, her husband decided to divorce her, using the triple talaq. At the same time he deposited Rs 3000 in court, claiming that he was returning the 'mehr' agreed upon at the time of marriage. According to Shah Bano, however, the mehr a sum meant to be given to the bride as "a mark of respect" was 3000 silver coins. Meanwhile the magistrate ruled that Shah Bano was entitled to maintenance under section 125, but fixed the amount at a ludicrous Rs 25 per month. She went on appeal to the Madhya Pradesh High Court, which raised the amount to Rs 179.20. Now her husband Mohammad Ahmed Khan went on appeal to the Supreme Court arguing that the High Court judgement exceeded its jurisdiction and violated Muslim personal law as stated by the Shariat. In effect, several statements made up this contention: first that as a Muslim he was bound primarily by Islamic Law; second, that as maintenance from a husband related to the laws of marriage and divorce, which in his case fell under Muslim personal

law, Shah Bano's application should be judged by this law and no other; and third, that if marriage, divorce and maintenance regulations fell under personal law, then criminal law should not enter the picture at all.<sup>33</sup> In support of these arguments, he produced written statements acquired from the Muslim Personal Law Board, which said that under the 'Shariat' the husband was not obliged to pay maintenance for more than three months after the divorce (the 'iddat' period): with this, and with giving his ex-wife her 'Mehr', his duties towards her ended. Moreover, 'said the Board the Shariat did not deal with the question of 'how the woman was to support herself after the iddat', and therefore the question was outside the purview of the court.

#### The Shah Bano Judgement :

In April 1985 the Supreme Court of India upheld the judgement of the High Court of Madhya Pradesh which had ruled in favour of a divorced Muslim woman's suit for maintenance. In doing so the court confirmed the validity of Section 125 of the CPC and its applicability to Indian Muslims. In the manner of its decision, the court also inflamed Muslim public opinion, creating what India Today called, "trauma, fear and indignation" among the Muslim community.<sup>34</sup>

The Supreme Court's judgement made three critical points: first, that despite the applicability to Mr. Khan of Muslim personal law, he was also subject to Section 125 of the Criminal Procedure Code. It declared

<sup>33</sup> Radha Kumar, op. cit., p. 161.

<sup>34</sup> Shekhar Gupta, "The Muslims: A Community in Turmoil", India Today, 31 Jan. 1986, p. 50.

that Section 125 is "truly secular in character" cutting across "barriers of religion"; and that the payments Khan had made were insufficient to meet the law's goal of enforcing the "individual's obligation to the society to prevent vagrancy and destitution". The judgement also stated clearly that "The statutory right available to her (Shah Bano) under that section is unaffected by the provisions of the personal law applicable to her".<sup>35</sup> Secondly, the court ruled that Section 125 does not contradict Muslim law with regard to the question of the liability of the husband to provide maintenance to the divorced wife. In order to reach this conclusion the court consulted the Koran. It found that the common interpretation of Muslim Law limiting the payment of maintenance to the three-month period of "iddat must be restricted to ... cases in which there is no possibility of vagrancy or destitution arising out of the indigence of the divorced wife". The correct Koranic interpretation according to the court, is that "if the divorced wife is able to maintain herself, the husband's liability to provide maintenance for her ceases with the expiration of the period of iddat". Thus "If she is unable to maintain herself, she is entitled to take recourse to section 125 of the code ... There is no conflict between the provisions of section 125 and those of the Muslim Personal Law on the question of the Muslim husband's obligation to provide maintenance for a divorced wife who is unable to maintain herself."<sup>36</sup>

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<sup>35</sup> Supreme Court Y.V. Chandrachud, CJ, D.A. Desai, O. Chinnappa Reddy, E.S. Venkataramiah and Ranganath Misra, JJ. Mohd. Ahmed Khan V/s Shah Bano Begum and others in *Women and the Law II*, Socio-Legal Information Centre, Bombay, 1999.

<sup>36</sup> Ibid.

It was not only the court's decision, but also the fact of its having reached its decision through an interpretation of the Koran, that enraged portions of the Muslim community. While there was considerable Muslim opinion expressed by those who acknowledged the right of the courts to interpret Islamic Law, others argued angrily that at best, the courts had no expertise in this area, and, at worst, their intrusion would mean the end of a distinct Muslim Personal Law and thus gravely endanger the very existence of the community in India.<sup>37</sup>

Thirdly, the Court ruled that just as payments during iddat did not absolve the husband of the responsibility to pay maintenance, neither did his payment to the divorced wife of mehr. This decision in effect nullified what was thought by many Muslims to be the meaning of section 127(3)(b) of the CPC, a section that had been put in place in 1974 in response to lobbying by members of the Muslim community. Section 127(3)(b) states that a Magistrate may cancel an order to pay maintenance to a divorced wife issued under Section 125 if he is satisfied that she has received "the whole of the sum which, under any customary or personal law applicable to the parties, was payable on such divorce". This language apparently refers to the mehr, which in Muslim custom is "a sort of bride price, but a price to be paid to the bride herself and not to her parents".<sup>38</sup>

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<sup>37</sup> Nawaz Mody, "The Press in India: The Shah Bano Judgement and Its After Math", *Asian Survey*, 27: 8 (1987), pp. 940-941.

<sup>38</sup> Brijbhushan Jamila, *Muslim Women: In Purdah and Out of It* Vikas, N. Delhi, 1980, p. 45.

Citing a number of authorities in Muslim Law, the Supreme Court concluded that the 'Mehr' is a mark of respect of the husband for the wife and that it is agreed to in consideration of marriage; it is not an amount payable to the wife by the husband upon divorce.<sup>39</sup>

Consequently, the payment of Mehr does not exempt a husband from the injunction of Section 125 to pay maintenance. This decision too, led to great protest.

In addition to the content of its decision, and willingness to reach it through Koranic interpretation, two other aspects of the court's judgement rankled with certain sections of the Muslim public.

Anyone reading about the Shah Bano controversy in the newspapers would get the impression that, Ex-Chief Justice Y.V. Chandrachud was the first judge ever to have granted maintenance to a Muslim woman under section 125 of the Criminal Procedure Code (Cr.P.C.) and that in doing so, he overruled the Muslim personal law. The creation of such erroneous impressions by the media is an indicator of how much more dangerous ignorance can be when it is systematically disseminated by the press.<sup>40</sup> In fact the Shah Bano judgement merely confirmed two existing Supreme Court precedents: Justice Krishna Iyer's, Fulzapulkar's and R.S. Pathak's judgement in the case of Bai Tahira V/s Ali Hussain Fissalli, 1979<sup>41</sup> and Krishna Iyer's, Chinnappa Reddy's and

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<sup>39</sup> Supreme Court Judgement, op. cit.

<sup>40</sup> Kishwar Madhu, Pro-Women or Anti-Muslim? The Shah Bano Controversy, Manushi No. 32 (Jan.-Feb. 1986), N. Delhi.

<sup>41</sup> 1979 (2) SCR 75.

A.P. Sen's judgement in the case of Fazlunbi V/s Khader Vali, 1980.<sup>42</sup> In both cases, the right of the divorced woman to maintenance was upheld. No uproar was created by either judgement.

Justice Krishna Iyer in the two judgements referred to, not once does he even mention the word 'Muslim'. He makes no comments upon Muslim personal law in general. His emphasis throughout is on the need to curb what he refers to as masculine injustice and to help women in distress.

In contrast, every substantive paragraph of the judgement in the Shah Bano case obsessively, dwells upon 'Muslims' and 'Muslim Personal Law'. Take, for instance, the following statement: 'Undoubtedly, the Muslim husband enjoys the privilege of being able to discard his wife whenever he chooses to do so for reasons good, bad or indifferent. Indeed, for no reason at all'.<sup>43</sup>

Responding to this Madhu Kishwar writes, 'If the word 'Muslim' were deleted from this sentence, would it not hold equally true? do not most husbands in our society exercise this privilege, regardless of their religion or lack of religion? By singling out Muslim men and Islam in this way, justice Chandrachud converts what is essentially a women's rights issue into an occasion for a gratuitous attack upon a community'<sup>44</sup>

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<sup>42</sup> 1980 (3) SCR 1127.

<sup>43</sup> Shahbano Judgement, op. cit.

<sup>44</sup> Kishwar Madhu Pro-Women or Anti-Muslim? The Shah Bano Controversy, op. cit.

Given that the judgement ruled that section 125 Cr.P.C. and the Shariat were mutually consistent, it was certainly odd that a common civil code was urged on grounds which appeared to contradict the ruling:

'A belief seems to have gained ground that it is for the Muslim community to take a lead in the matter of reform of their personal law. A common civil code will help the cause of national integration by removing disparate loyalties to laws which have conflicting ideologies. No community is likely to bell the cat by making gratuitous concessions on this issue ... we understand the difficulties involved in bringing persons of different faiths and persuasions on a common platform. But a beginning has to be made if the constitution has to have a meaning.'<sup>45</sup>

'Put like this, it was clearly possible to infer that the judges were saying that Muslim personal law was bad, but 'the Muslim community' preferred unjust laws, so somebody (in this case the State) would have to impose justness on them. It was similarly easy to infer that imposition was to be made not for the sake of justice alone but also for the cause of 'national integration'. And from this it was easy to infer that national integration required Muslims to abandon 'loyalty' to Islam and Islamic Personal Law.'<sup>46</sup>

The disdainful tone of Justice Chandrachud's decision is in substantial part to blame for the outrage that greeted it.<sup>47</sup>

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<sup>45</sup> Supreme Court Judgement, op. cit.

<sup>46</sup> Radha Kumar, op. cit., p. 163.

<sup>47</sup> Leslie J. Calman *Toward Empowerment. Women and Movement Politics in India.* Westview Press Inc, 1992, p. 156.

In the weeks and months following the judgement, Muslim religious and political leaders issued statements condemning it; articulated fears that forces "inimical to the Muslim community shall use the judgement to secure the extinction of Islamic Law and the promulgation of common civil code. Muslim religious leaders concurred in the view that the judgement represented an attack on their community. The Ulema issued a 'fatwa' (proclamation) that it was against the teachings of Islam. Wide publicity was given to the fatwa and within a few months the whole issue took the form of a communal agitation.

Voices were also raised in defense of the Supreme Court decision but they were fewer and weaker. Only one Muslim leader in the Congress (I), the Minister of State for Energy, Arif Mohammad Khan, spoke up in favour of the grant of maintenance to Shah Bano, while the others, including prominent Muslim Congress women, protested it.<sup>48</sup> The Janata Party found itself divided. The women's wing passed a resolution which welcomed the judgement and appealed to members to educate Muslim women about its importance and to "bring them into the mainstream of the movement for the emancipation of women"; it further called for a Uniform Civil Code. Muslim leaders of the party in turn issued a statement angrily denouncing the women's wing.<sup>49</sup>

Women's organizations defended the Supreme Court judgement, women's groups tried to define the issues raised by the decision as

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<sup>48</sup> "Muslim Personal Law: Evading the Issue", Economic and Political Weekly, 30 Nov., 1985, p. 2096.

<sup>49</sup> The Hindu, 14 Oct. 1985.



women's issues – of equality under the law, of the right to marital property – rather than as Muslim or communal issues.

In August 1985, a bill seeking to exclude Muslim women from the purview of Section 125 came up in Parliament. Sponsored by a Muslim League M.P., G.M. Banatwala, the Bill was clearly in response to the Shah Bano petition and the feminist espousal of her cause, for it was introduced while her case was being decided upon by the Supreme Court, just about a month before the judgement.<sup>50</sup> Muslim Agitation and Communal Tensions lead to the Muslim women (Protection of Rights on Divorce) Bill 1986.

Since independence, the "Muslim Vote" has most often gone to Congress candidates and has been a critical component in Congress success. However, in the wake of the Shah Bano decision and the communal turmoil that accompanied it, Muslim voters began turning toward opposition parties. In the December 1985 by-election, a district in North Bihar which a year earlier had elected a Congress candidate to the Lok Sabha by a margin of over 130,000 votes now elected a known proponent of Muslim conservatism Syed Shahabuddin of the Janata Party, by a margin of 70,000.<sup>51</sup> "It was not a vote for Shahabuddin", said one observer, "it was a vote for Shariat".<sup>52</sup> In Gujarat, in Orissa, in West Bengal the story was the same: Congress candidates lost, or won by significantly smaller margins, as Muslim voters deserted the party.

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<sup>50</sup> Radha Kumar, *op. cit.*, p. 164.

<sup>51</sup> Sema Mustafa, "Behind the Veil", *Telegraph*, 2 March 1986.

<sup>52</sup> Cited in Leslie Calman, *op. cit.*, p. 159.

In addition, there were several incidents of communal tension and violence that left the Muslims feeling vulnerable; this added fuel to the anti-Congress flames and increased Congress desire to appease the Muslim community. The most urgent conflict began in Ayodhya, Uttar Pradesh, in Feb. 1986. In a dispute over whether a particular site should remain a Muslim mosque, the Babari Masjid, or whether instead, it had originally been and should once again be a Hindu temple, the Faizabad Court ruled in favour of the Hindus. Throughout northern India, Hindus and Muslims exploded in communal demonstrations and violence, with dozens killed. The decision, said one commentator, "reinforced the siege mentality among the Muslims, giving greater credibility to the section of the community's leadership that has been arguing that the Congress (I) government is only paying lip service to ... secularism."<sup>53</sup>

In the meantime, large Muslim demonstrations protesting the Shah Bano judgement continued; in early January more than 300,000 marched in Dhanbad, Bihar. Women's organizations and progressive Muslims also organized rallies, such as the one sponsored by fifteen women's organizations in New Delhi<sup>54</sup>, but they attracted hundreds or thousands of demonstrators, not hundreds of thousands. 'The agitation in favour of Muslim women's rights was essentially elitist and marked by the absence of strong protest from Muslim women specifically. While this is hardly surprising given the Muslim social order that limits women's access to the public world, still it stood in contrast to the enormous outcry and electoral

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<sup>53</sup> Ajai Kumar, "The Muslims: Anger and Hurt", India Today, 15 March 1986.

<sup>54</sup> Times of India, 8 March 1986.

backlash organized by Muslim traditionalist men.<sup>55</sup> The prospect of a new bill undoing the Supreme Court judgement caused a considerable furore. Hearing that it was due to be introduced on the 25th of February 1986, about 150-200 women activists from the Janwadi Mahila Samiti, the Mahila Dakshata Samiti, the National Federation of Indian Women and the Dahej Virodhi Chetna Manch courted arrest outside Parliament House on the same day.

By late January or early February, Rajiv Gandhi had decided to introduce a bill that would undo the impact of the Shah Bano decision by negating the applicability of Section 125 to Muslims.<sup>56</sup> His response in April to a deputation of women's organizations which pleaded with him to support equal rights for women and maintenance for divorcees was to dismiss their demands on the ground that these were "western" and "not Indian" concepts.<sup>57</sup> To quote Leslie Calman, "He shamelessly expounded the proposition that Muslim women would in fact be better protected under the new bill, and in so doing, attempted to mask the fact that in order to retain the vote of Muslim men he was selling out the rights of Muslim women. This ostensibly forward-looking prime-minister, the one who had promised to bring India into the twenty-first century, in fact condemned Muslim women in India to a reactionary law that newly engaged the state as an actor in their victimization".<sup>58</sup>

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<sup>55</sup> Leslie Calman, *op. cit.*, p. 159.

<sup>56</sup> Times of India, 6 March 1986.

<sup>57</sup> The delegation countered the prime minister's stand by pointing out that even Parliamentary democracy was a western concept, The group included members of AIDWA, NFIW.

<sup>58</sup> Leslie Calman, *op. cit.*, p. 159.

Prime Minister in his Lok Sabha speech introduced this Bill as one which would strengthen secularism and lead to the codification of Muslim Laws.<sup>59</sup> The cynically titled Muslim women (Protection of Rights on Divorce) Bill 1986 removes the Muslim husband's responsibility to pay maintenance to his divorced wife; for Muslims it nullifies Section 125 of the Criminal Procedure Code. The bill also appears to be in violation of Article 15 of the constitution, which prohibits discrimination on the grounds of both religion and sex.<sup>60</sup>

Under the provisions of the bill, a Muslim man must pay the woman he divorces the mehr (dower) that was agreed to at the time of marriage; pay her "a reasonable and fair" maintenance for the three months of the iddat period; and, if she is to care for their children, he must pay her maintenance until their youngest child is two years old. This is the sum of his responsibility to a woman he has, in all likelihood, divorced unilaterally and with no demonstration of just cause.

If, after these payments, a divorced wife has not remarried and is unable to support herself, a magistrate may order her "relatives who would be entitled to inherit her property on her death" (i.e. father, uncles, brothers, sons), and who are financially able to do so, to pay maintenance. In the event that no such relatives can be located, the magistrate is empowered to order a Wakf Board to pay maintenance to the woman.

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<sup>59</sup> India Today, 31.3.86.

<sup>60</sup> Hasan Zoya, *The Constitution and Muslim Personal Law Forging Identities*, in *Gender, Communities and the State*, Kali For Women, New Delhi, 1994.

The Wakf boards are private Muslim organizations that give money for "pious, religious, or charitable" purposes; most of their funds come from private sources or the income generated by properties, but the central government has also funneled welfare funds through the Wakf boards, in keeping with the 1954 Wakf Act.<sup>61</sup> Immediately after passage of the bill, dozens of articles appeared in the press analyzing the existing status of the Wakf boards. The conclusion was that the boards had nothing approaching the financial capacities that would be demanded of them by the new Muslim Women Bill. In short, the new bill is a prescription for the destitution of divorced Muslim women.

A woman's issue was transformed into an issue of Muslim identity. 'Fundamentalists displaced what was essentially an issue of minimal rights for women in an unequal and oppressive society on to the terrain of religious faith and identity. Their audience was a minority, and as such experiencing all the traumas, discriminations, and problems of a minority community ... For the BJP and other Hindu Communal groups and parties, this was an opportunity to whip up anti-Muslim sentiment by highlighting the 'evil Muslim man' and demonstrating the "appeasement of the minorities", while still appearing to be pro-women. Their campaign seemed to add veracity to the claims of Muslim, fundamentalists, and sowed doubts in the minds of many who were in agreement with the women's movement and would otherwise have declared themselves openly. The BJP's demand for the immediate foisting of a UCC (Uniform Civil Code)

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<sup>61</sup> Neerja Chowdhury, "Wakf Boards in No Shape to Help Out", *The Statesman*, 12 March 1986.

further hampered the women's campaign against the Muslim women's Bill, women's organizations had to tread a delicate line in order to separate clearly and unambiguously their opposition to the Muslim Women's Bill from that of the Hindu fundamentalists with their new found and short-lived 'concern' for women's rights.<sup>62</sup>

The Muslim Women's (Protection of Rights on Divorce) Act 1986 was a triumph against the Supreme Court Judgement. Supporters like Tahir Mehmood, an Islamic scholar and professor at Jawaharlal Nehru University, provided an Islamic rationale. On marriage the responsibility of maintenance shifts to the husband and on its dissolution goes back to the natal family, Muslim girls are not given by 'Kanyadaan' and so retain their links with their parental families.<sup>63</sup> The heads of the various 'Jammats' were relieved that the right to Quranic interpretations was now firmly out of the court's hands. The man in the street who had participated in thousands against the Supreme Court judgement, felt that he had achieved double victory: he had not only "Saved" Islam from danger but had also increased his control over his wife.<sup>64</sup>

The main criticism against the Act is that it discriminates against Muslim women by disregarding the principle of equality before law. Zoya Hasan, Associate Professor at Jawahar Lal Nehru University and Convener of the Committee for Protection of Rights of Muslim Women

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<sup>62</sup> Indu Agnihotri Rajni Palriwala, *Politics of the Contemporary Women's Movement in India*, Sathya Murthy Ed. Region, Religion, Caste, Gender and Culture in Contemporary India. Oxford University Press, Delhi, 1996, pp. 513-514.

<sup>63</sup> Nandita Shah Nandita Gandhi, *op. cit.*, p. 241.

<sup>64</sup> *Ibid.*

argued, "Under the guise of freedom of religion and personal law, Muslim women are being denied human and constitutional rights".<sup>65</sup> Vasudha dhagamwar, a noted jurist, countered the reform from within the community argument with, "Muslim women form 51 percent of the Muslim population. When they approach the courts for maintenance they are tacitly asked for a change in their personal laws. They have as much right to make this demand as men and religious, fundamentalist leaders."<sup>66</sup>

The campaign against the Bill was one of the major campaign of the women's movement. As early as August 1985, when rumours of the Government's back-tracking on the retention of Section 125 of the Criminal Procedure Code had begun to spread, a conference was held in Bombay on women's maintenance rights. In Delhi, the Janwadi Mahila Samiti (JMS) organized a meeting in order to elicit opinion and obtain support for the retention of Section 125 of the Criminal Procedure Code. It was attended by a cross-section of nearly 200 woman, mostly Muslim. Of approximately 20 speakers, at least 9 were divorced, destitute women from bastis.<sup>67</sup>

This meeting, unanimous in its call for the retention of Section 125 of the Cr. P.C., came as a revelation to activists. If a single organization

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<sup>65</sup> Ibid., also Desai A.R. *Impact of Religions. Personal Law on Status of Women, Women's Liberation and Politics of Religions Personal Laws in India*, C.G. Shah Memorial Trust Publication, pp. 85-100.

<sup>66</sup> Times of India, 10.2.86.

<sup>67</sup> Agnihori Indu and Palriwala Rajini *Tradition the Family, and the State : Politics of the Contemporary Women's Movement*, pp. 503-532 in Sathyamurthy T.V. *Region, Religion, Caste, Gender and Culture in Contemporary India*, Oxford University Press, Delhi, 1996.

could mobilize in two weeks a successful vocal opposition to the so-called leaders of the community it meant that the disagreement with the latter must be wide-spread and far-reaching. Organizations such as the AIDWA (All India Democratic Women's Association) decided that their major task lay in helping to give this dissenting opinion an effective role.<sup>68</sup>

Interestingly, however, the campaign against the Bill was not carried out under a single, joint action umbrella, even temporarily, as the anti-dowry and anti-rape agitations had been. Instead a series of different identities and blocs appeared, constituted separately for each form of opposition. Public meetings in Delhi, for example were generally organized separately by different women's organizations, such as Karmika or the Mahila Daksheta Samiti. For demonstrations, on the other hand, women's groups in Delhi formed into separate blocs. The autonomous women's groups came together to organize a demonstration on March 6, 1986 demanding that the communalisation of women's issues cease, and a Uniform Civil Code (UCC) be framed. A loose coalition across India was formed between autonomous women's groups, societists, Masists and social reformers, to put together a signature petition against the Bill.<sup>69</sup>

The campaign spread from Maharashtra and Delhi to the towns and villages of Kerala, to West Bengal, Tamil Nadu, Andhra Pradesh, Gujarat, Bihar, Assam, Punjab and Haryana. It took various forms: group and hall

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<sup>68</sup> Not a Uniform Civil Code, but Equal Rights, Equal Laws. all India Democratic Womens Association Publication Series No. 6, New Delhi, 1998.

<sup>69</sup> Pande Divya, Religious Fundamentalism Threat to Women's Equality in A.R. Desai Women's Liberation and Politics of Religions Personal Laws in India, Bombay-86, pp. 54-58.



meetings, conventions, Symposia, seminars, dharnas, demonstrations, rallies, mass postcards, and telegrams to the government, and signature campaigns, women's organizations such as All India Democratic Women's Association (AIDWA) Forum Against Oppression of Women (FAOW) Indian Federation of Women Layers (IFWL) Joint Women's Programme (JWP) Karmika Mahila Daksheta Samiti (MDS), National Federation of Indian Women (NFIW), Saheli, Young Women's Christian Association (YWCA); Muslim and other social reform groups, such as Muslim Satya Shodak Mandal (MSM) and the Anjuman Taraqqi Pasand Muslimeen (ATPM) in Maharashtra, the Kerala Islamic Shariat Board (KISP) university organizations, research institutions and professional forums participated, both independently and jointly. The text of a Resolution adopted by women's groups in Delhi on the Muslim women's (Right to Protection on Divorce) Bill, 1986.

This public meeting of Karmika organized on 22 March 1986 at 10 a.m. and attended by various academicians, lawyers, journalists, doctors, teachers and social workers, resolves as under :

We strongly protest against the Muslim Women's (Right to Protection on Divorce) Bill, 1986, introduced in the Lok Sabha recently. The Bill is a charter of slavery to Muslim women and highly derogatory to the dignity of all women. The Criminal Procedure Code confers a statutory right of maintenance on women in every case irrespective of creed or custom if a person of sufficient means neglects or refuse to maintain his wife. The object behind this law is to save women from being exposed to

vagrancy or destitution which, as we all know, lead to other social problems. Surely no religion in the world would advocate exploitation of this deprived section and the neglect of women. The Holy Koran stipulates in Verse II.241 which also provides: Aur talaq walon ke liye bhi munasif taur per nano-napht hai. Yeh wajib hai perhezdaron par. Maulana Ahmed Raza Khan Sahib, the well known authority on translation of the Holy Koran has translated this verse as: 'To render divorced women appropriate reasonable maintenance. This is compulsory for the god fearing'.

It is unfortunate that people with vested interests have given this very human issue a communal and religious colouring. Ruling party MPs who had sworn in their election manifesto to protect the rights of women, have here completely gone back on their pledge. We ask: 'Are election promises mere window dressing?' Should they not apologise to the public whom they have betrayed?

The other argument of the fundamentalists that the Supreme Court has no right or authority to interpret the Holy Koran is also highly misplaced. In the codified law of Muslims, like Dissolution of Muslim Marriages Act, 1939, it has already been provided that a court may look into the relevant provisions of the Koran. This judgement of the Supreme Court in the Shah Bano case is supported by the rulings of great Muslim jurists like Imam Jafar and Imam Shafai who are accepted throughout the Muslim world as authorities.

We urge the Government to look into this issue rationally and humanely as it has far reaching implications and is even a threat to the

unity of the nation. We appeal to the Honourable Prime Minister of India and the Parliament to abandon the Bill as it is against basic human rights. The Bill, if passed, will take women back by fifty years and thereby the country, for women are, after all, nearly half the population of this country, be that Muslim, Sikh, Hindu, Christian or Parsi.<sup>70</sup>

Exercepts from an open letter (dated Feb. 28, 1986) to the Prime Minister from Justice V.R. Krishna Iyer on the question of personal Laws :

Sec. 125 Cr P.C. is obviously a secular provision designed to salvage all divorced damsels in penurious distress, regardless of religion, from the throes of desperate destitution, which may drive them to prostitution and other survival alternatives. This provision is sustained by Art. 15 of the Constitution and applies to all women equally .... Illusory alternatives driving Muslim women to seek maintenance from their parents and from the Wakf Board (most of which have little in the kitty) are clearly and substantially discriminatory. You could as well put Hindu and Parsi and Christian women under the same handicap and drive them to their religious trusts. Why pick on Muslim women? They are the major victims, as statistics show from a study of applications for maintenance under Sec. 125 Cr. P.C.

You will easily appreciate that this provision has no relation to liability to maintenance under the personal law. The jurisdiction is different, the jurisprudence is different, the measure and procedure are different. One is rooted in family law, the other in public order and social

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<sup>70</sup> Radha Kumar, op. cit., p. 163.

justice. To confuse between the two is to be guilty of judicial cataract. Sec. 125 Cr. P.C. is of British vintage broadened by the benign Parliament. The 21st century is a summons to move forward progressively, not to retreat regressively, frightened by 6th century primitivism. Sec. 125 rescues needy divorcees, rendered homeless, from moral danger, resorting to means of livelihood contrary to peace, tranquillity and social health. Such a provision is founded on the secular values of our Republic and is expressly contemplated in Art. 25, which empowers the State to make provision necessitated by public order, morality and health. To contend that Sec. 125 is for or against any religion is a crass caricature of the scope and purpose of the law. To invoke 'religion in danger' to resist a provision based on the constitutional concern for public order, morality and health envisioned in Art. 25 is to draw the red herring across the trail. Three decisions of the Supreme Court, which have consistently affirmed this approach, are enough authority to negative the fundamentalist distortion. Masculine obscurantism, Muslim or Hindu, should accept the law laid down by the highest Court explaining the *raison d'être* of the measure.

True, some ayatollahs of India and their political muktiars are making noises as is their wont, as if Islam would decline, if women in distress were kept contented! What a travesty of truth! Many hundreds of liberal Muslims and many organisations of Muslim and other women have, to my personal knowledge, applauded the Shahbano ruling and have been outraged by the reversal of the ruling through the legislative process. It is a grievous error to exalt the strident few reactionaries and pachydermic

communalists as the sole representatives of the masses of women. Women's status is at stake; kindly discover the truth before it is too late. There is bitter disappointment among Muslims and total disenchantment among women consequent on the surrender of the Prime Minister to a handful of surrogates in Parliament whose 'sound and fury' scare him and make him deaf to the deeper feelings of the broader community.

What is more, there is a terrible danger of Hindu communalism being whipped up on this score. The temperature is hotting up. Bigots on both sides are busy. I implore you not to let down our secular stability, the political motive being transparent.

Let me tell you that the bill is a sin against the Quran and the Constitution of Wakfs. Many Islamic scholars hold that the Koranic command to husbands to pay upkeep expenses to divorcees beyond the period of iddat is clear. Again, Wakfs are religious and charitable trusts by pious Muslims to perform specified holy acts for their spiritual benefit. It will be sacrilege to divert these funds for maintenance of other people's wives. Many Wakf Boards are themselves poor and it is an illusion to make them caretakers of jilted and jettisoned wives ... the whole project is a legislative tamasha? Please don't stultify our great Parliament. Already the Supreme Court Judges have been insulted by Minister Ansari in Parliament.

Many I conclude with a prayer to you on behalf of Indian women, human rights defenders, secularist radicals and constitutional advocates?

The bill to kill the Shahbano decision of the Supreme Court is the unfortunate political product of a creative genius for multi-dimensional injustice. The bill is an injustice to our Republic's secular principle; it is an injustice to women's basic rights and, therefore, violative of human rights; it is an injustice to the egalitarian policy in our Constitution in Arts. 14 and 21 and 25; it is a vindictive injustice to Muslim women selling the soul of the State's humanism to obscurantist fundamentalists; it is an injustice to the holy Quran which insists on payment of maintenance of divorced women in distress; it is an injustice to the 21st century because it throws us back to the 6th century to buy Islamic votes through the noisy illusion of electoral support of fundamentalists whose hold on the liberal Muslim intelligentsia and the suffering masses of women is marginal; it is an ultra vires injustice to the law of Wakfs because Wakfs are not trusts to look after privatised wrongs inflicted by irresponsible talaqs; it is an injustice to family integrity because it is fraught with potential for litigation between close relatives. It is an injustice to pragmatic working of the law because, functionally speaking, the provisions lead the destitute to several cases in search of a pittance; it is an injustice to national stability, because the secular credibility of the Government will be a casualty. The dictate of the social dialectic of India today leaves no choice.<sup>71</sup>

"The passage of the Muslim women (Protection of Rights on divorce) Bill is directly counter to the goal of equality. It is undesirable a step away from the equal treatment of women under the Law, preventing

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<sup>71</sup> Ibid., pp. 167-168.

both the equality of women to one another, and the equality of women to men. It reaffirms the authority of conservative male religious leaders, rather than elected officials to determine law for women, and thus denies women a voice in the creation of law that governs them. It is undemocratic, it is contrary to secularism, and it is sexist".<sup>72</sup>

Contrary to this view was Najma Heptulla, Congress (I) Member of Parliament, Rajya Sabha statement :

Why should the government intervene on a subject like the Muslim Personal Law? It is the people who are affected and it is the affected people themselves who must ensure a proper implementation of their laws. I say implementation because there is nothing wrong with Muslim Personal Law. Rather, it is the most progressive code that governs any community in the world .... I cannot understand how it is anti-woman. If anything, it is the opposite. No marriage is complete without the girl's spoken consent .... If the man has the right to divorce, the woman has too. In the ritual that is prescribed for a divorced couple wanting to marry again ... she has a chance to try another man and see if the first one is really better. The basic problem is of acquainting all women with their rights and to have a machinery that can ensure they enjoy their rights fully. (Najma Heptulla, Congress (I) Member of Parliament, Rajya Sabha, quoted in Sunday Observer, May 6th, 1984).

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<sup>72</sup> Leslie J. Calman, *Toward Empowerment, Women and Movement Politics in India*, 1992. Westview Press Inc., p. 161.

Nonetheless, although outraged at Congress for succumbing to fundamentalist pressure<sup>73</sup>, most women's rights advocates have deferred their quest for a Uniform Civil Code. Most people who are supporters of women's rights are sympathetic too, to the rights of ethnic and religious minorities, including Muslims. This does not make them allies of Muslim men in their quest to retain power over Muslim women. But it does put them at odds with the other political movement that actively supports a Uniform Civil Code: Hindu communalism.<sup>74</sup> Women's rights advocates are caught between their desire to advance equality for women and their determination not to intensify communal hatred and violence.<sup>75</sup>

The tensions between Hindus and Muslims that existed just after partition have not abated over the years. Hindu communalism has been on the rise since 1980s and it has become more common for what one observer calls "Cultural Hindu Organisations of a militant messianic kind"<sup>76</sup> to preach a gospel of Hindu Superiority and to decry what they perceive to be state favouritism toward religious and cultural minorities - Muslims dalits and tribals.

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<sup>73</sup> Amrita Chhachhi Identity Politics, Secularism and Women: a South Asian Perspective, p. 84 in Hasan Zoya Ed. Forging Identities, Gender, Communities and the State, Kali for Women, 1994, N. Delhi. Muslim Fundamentalist organisations such as the Jamaat-i-Islami has an extreme position on personal law, arguing that even a ban on polygamy would be the "first step in the direction of erasing every symbol of a separate Muslim Culture in India.

<sup>74</sup> e.g. Mridula Sinha, Secretary General, BJP Mahila Morcha writes, "It is a tragedy that in the eye of the law, the concept of Indian womanhood is non-existent. They are Hindu women, Muslim women and Christian women ... The emancipation of the Indian women will remain a far off cry as long as a Uniform Civil Code is not passed. Mother of the Hindu Backlash, Interview with Mridula Sinha by Shiela Reddy, The Telegraph, April 7, 1993.

<sup>75</sup> Hasan Zoya Ed., op. cit.

<sup>76</sup> Rajni Kothari, "Communalism in India: The New Face of Democracy", Lokayan Bulletin, 3: 3 (1985), p. 14.



The support of these organizations – including the Rashtriya Swayam Sewak Sangh, the Vishva Hindu Parishad and the Shiv Sena – for the Uniform Civil Code has nothing to do with a desire to improve the status of women, which is far from their minds. Their goal is to force religious minorities to accept the laws and practices of the majority community.<sup>77</sup> The demand for a Uniform Civil Code became an important plank upon which a hate campaign against Muslims could be built. Through it, Hindu communal organisations were not only able to gain popularity among Hindu males who envied their Muslim counterparts their ‘freedom’ to practice polygamy<sup>78</sup> but could also pose as champion’s of the women’s cause. The Hindu Communalists believe that a Common Civil Law should outlaw the practice of polygamy. ‘Their argument against polygamy is not that it is determinental to women, but rather that Muslim polygamists produce innumerable children and thus Muslims multiply more rapidly than Hindus; they propagandise about the danger of Muslims rapidly overtaking the Hindus in numbers. They say virtually nothing about the polygamy which, while illegal, is known to flourish also among Hindus.’<sup>79</sup>

The women’s movement has been at the same time a movement for secularism, democracy and human rights: it cannot support organizations

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<sup>77</sup> Agnes Flavia Redefining the Agenda of the Women’s Movement Within a Secular Framework in Tanika Sarkar Urvashi Butalia Ed. Women and the Hindu right. Kali for Women, New Delhi, 1996.

<sup>78</sup> To give an example in State of Bombay Vs. Narasu Appa Mali AIR 1952 Bom. 84 it was contended that banning polygamy among Hindus violated the provision of equality under article 15(1) of the Constituion.

<sup>79</sup> Asghar Ali Engineer, “Does the Quran Discriminate Against Women?” Onlooker 8-22 September 1985, also vibhuti Patel, “Shah Bano’s Case and its Aftermath”, Women News, 16 April, 1986.

that preach bigotry and foster an atmosphere of violence. In order to avoid seeming to condone Hindu Communalism, women's groups have by and large shelved their campaign for a Uniform Civil Code.

Thus, the women's movement has been bested by not one but by two communal movements. The willingness of the Congress government to pass the Muslim Women (Protection of Right on Divorce) Bill underscores the relative weakness of the Women's Movement and its inability to mobilize mass support, as compared with the strength of Muslim communalism. That women's rights organizations are afraid that their clear moral message about the need for legal equality for women will be subsumed into a campaign of hatred for minorities demonstrates the greater power of Hindu Communalism.<sup>80</sup>

The feminist defeat represented by the Muslim Women Bill points to the limits of organizing for women's rights in the absence of a mass out reach. Feminist organising for women's rights in the absence of a mass base, then, has its limits. Access to decision makers, the sympathetic support of influential journalists, financial resources: all these, can help to stir debate, raise consciousness and bring a secular, rights perspective to the forefront of discussion. But such an elite approach does not guarantee success in changing law.<sup>81</sup> To build up a more mass-based movement among women that would lend more clout to the legislative and judicial maneuverings of movement, women would require women to be

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<sup>80</sup> Leslie J. Calman, *op. cit.*, p. 162.

<sup>81</sup> *Ibid.*, p. 163.

empowered. The silence of Muslim women with regard to Shah Bano and the Muslim Women Bill is eloquent confirmation of this necessity.<sup>82</sup>

Personal laws have also not been legislatively reformed due to pressure from the respective religious authorities, political heads of the communities. Indeed, raising the bogey of "religion in danger" every time changes to family and personal laws are proposed, has produced a situation where the choice always appears as one between "women's rights" and "minority rights", with no serious attempt to reconcile the two.<sup>83</sup>

Women's groups feel that all personal laws have been anti-women.<sup>84</sup> None of them treat women as 'individuals'. If the Muslim Personal Law discriminates against women so do the Hindu, the Parsi and the Christian Personal Laws. To give a few examples from the Hindu Personal Law which considers the father to be the natural guardian of the children, does not give co-parcenary rights to daughter over ancestral property and does not, allow a divorced woman an equal share of property, income and assets unless these are in joint names or were gifts before or at the time of the wedding. Under the Hindu Adoption and Maintenance Act, 1955, a Hindu Man or Woman who is single can adopt a child in his or her name. But a married Hindu woman cannot adopt a child in her name. The child has to be adopted by her husband.

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<sup>82</sup> Ibid., p. 163.

<sup>83</sup> Desai, A.R. Ed. Women's Liberation and Politics of Religions Personal Laws in India, C.G. Memorial Trust Publication, Bombay, 1986.

<sup>84</sup> Dhagamwar, Vasudha, Existing personal laws and their implication for society with special reference to women. National Workshop on Atrocities Against women and Family violence, Bombay, Dec. 1-5, 1987, CWDS.

Of equal if not greater importance, is that, though there are some differences between Hindu and Muslim Law, there is very little difference between the practice of the two communities. Most Hindus do not follow the codified Hindu Law as represented by the Acts passed in 1955. Instead, they follow the customary law prevalent in their own Kinship group and religion. For instance, a very large number of Hindu girls are still married and their marriages consummated before the girls attain the age of eighteen despite laws to the contrary.<sup>85</sup>

In some respects, reformed Hindu Law is worse than unreformed Muslim Law. For instance, a Muslim daughter cannot be disinherited by her father making a will. But a Hindu daughter can be and often is deliberately excluded by her father making a will exclusively in favour of his sons.<sup>86</sup>

Even where Hindu Law is better in words, it is usually not worth much more in practice. For instance, the committee on the Status of women in India stated in 1975 Report that a census of India survey had revealed that the incidence of polygamy was 5.8 percent among Hindu men and 5.7 percent in Muslim men. That is there is no meaningful difference in the incidence of polygamy amongst Hindus as compared to Muslims, even though polygamy is legal for Muslims and illegal for Hindus.<sup>87</sup>

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<sup>85</sup> Kishwar Madhu, *Pro Women or Anti Muslim? The Shah Bano Controversy*. Manushi, No. 32, 1986.

<sup>86</sup> *Ibid.*

<sup>87</sup> CSWI Report 1975, op. cit.

In practice, the law can be evaded or ignored by men by virtue of their dominant position in society, the family, the community. A woman, whether Hindu or Muslim, can very often be compelled to accept her husband's bigamy if she is economically and socially dependent on him, or has no security against violence or threats of violence.

Unfortunately, none of the anomalies and anti-women biases within the Hindu Code as mentioned above receive wide media publicity. They remained hidden in statute books and legal manuals. The women's movement did not rally around litigations challenging these anti-women biases in its campaign for a uniform secular code. Hence the demand by the women's movement could not clearly position itself away from the sexist Hindu Code. Almost by default the movement contributed to the fiction popularised by the Hindu fundamentalists that the Hindu Code is the perfect family code which ought to be extended to other religious denominations in order to liberate women.<sup>88</sup>

In the words of Flavia Agrres,

"The women's movement could not thus allay the fears of the minority women that the Hindu Code would not be thrust upon them under the guise of 'Uniformity' in order to crush their cultural identity. Already burdened under sexist and archaic laws, women of minority communities would now have to bear the brunt of this 'default' as well. In addition, the severe opposition from fundamentalists of both Christian and Muslim

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<sup>88</sup> Agnes Flavia Redefining the Agenda of the Women's Movement Within a Secular Framework in Tanika Sarkar Urvashi Butalia, p. 146, Ed. Women and the Hindu right. Kali for Women, New Delhi, 1996.

communities to the Uniform Civil Code and assertion of their cultural identity means obstacles to the rights of minority women".<sup>89</sup>

Confronted with the problem of formulating a code that would be most acceptable and useful to women and men, women's organizations have suggested a Civil Code that is clearly and unambiguously based on substantive model of equality.<sup>90</sup>

### **Communalism : A Challenge to the Women's Movement in India :**

The newest and perhaps most difficult challenge to the women's movement has come from communalism. Communalism has perpetuated a continuing violence against women by opposing the very principle for which women are struggling and the women's movement has rallied round – women's separate identity and their right to equal justice guaranteed to them under the constitution.<sup>91</sup>

This question becomes important if we consider the attempt being made by fundamentalism to mobilise women along religious lines to put them on opposite sides even though all shades of fundamentalism share a common hostility to gender equality. Women have always been used by religious fundamentalists as carriers of the "purity" of the bloodline as "custodians" of cultural traditions. Thus control of women has been a common denominator underlying ideologies propagated by fundamenta-

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<sup>89</sup> Ibid.

<sup>90</sup> The Recommendations by Vimochana and Lawyers Collective (1988) and Recommendations by the All India Democratic Women's Association (AIDWA) (1995) in Appendix.- X

<sup>91</sup> Pandey Gyan, *Women's Rights and Reform of Personal Laws' in Hindus and Others: The Question of Identity in India Today*, Penguin, Delhi, 1993.

list, regardless of religion they claim to represent as was clear from the experience of the contemporary women's movement, on two major issues which came up in the eighties. The cases of Shah Bano discussed earlier in this Chapter and Roop Kanwar<sup>92</sup> clearly showed that the Personal Laws of all religions were anti-women. Fundamentalists in different communities though ostensibly hostile towards each other, are at one in their antagonism to women's rights.<sup>93</sup> Thus, communalism is not seen as being undesirable only because of the violence it inflicts during riot situations. Equally dangerous is the fundamentalist's subtle, but continuous opposition to the principle of "a woman's separate identity and her right to equality and justice ..."<sup>94</sup>

The women's movement has had to directly confront the issues emanating from various divisions along religious / community lines. In the words of Tanika Sarkar 'One of the most sinister features of the recent. Hindutva movement'<sup>95</sup> has been the foregrounding of the militantly

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<sup>92</sup> The case of the Sati of Roop Kanwar and the issue of Fundamentalism has been discussed at length in the Chapter on Women and Violence.

<sup>93</sup> Jean D'Cunha, *The Muslim Law: a woman is Half a man*, Desai A.R. *Impact of Religious Personal Laws on Status of Women in Independent India*. Jean D.'Cunhe *Hindu Law has its lapses in Desai A.R. Women's Liberation And Politics of Religious Personal Laws in India*, C.G. Shah Memorial Trust Publication.

<sup>94</sup> Pande Divya *Religious Fundamentalism Threat to Women's Equality in A.R. Desai, op. cit.*, pp. 54-58.

<sup>95</sup> Tanika Sarkar and Urvashi Butalia Commenting on the events of 6 Dec. 1992 remark "on 6 December 1992, self-styled Hindutva militants demolished a historical mosque and unleashed a storm of violence against the besieged community of Indian Muslims. The significance of the events of 6 Dec. 1992 lay in the fact that the political formation that organised the Hindutva movement explicitly claimed that the act of demolition was a move to transform the Indian polity as a whole. The proclamation of a Hindu Nation that was, they hoped, going to replace the secular self designation of the Indian State, was a precursor of far reaching changes". *Women and the Hindu Right* Ed. by Tanika Sarkar, Urvashi, Butalia, p. 1.

communal Hindu women in a variety of unprecedented ways.<sup>96</sup>

With women's concern gaining prominence in both governmental and non-governmental organisations during the eighties, women's issues became an important agenda for all political parties. The BJP located women along with SC/STs as a primary target area for its elections and has formed a new group of full time cadres to work for them.<sup>97</sup>

Whereas the women's movement has fought against all shades of religions fundamentalism, the oppression of fundamentalism and communalism of the majority community has resulted in a qualitatively different situation. Six national women's organizations<sup>98</sup> in a joint report prepared for the Beijing Conference<sup>99</sup> devoted a section to women and communalism. Apportioning blame on majority communalism the report stated "In the Hindutva game of promoting Hindu nationalism the norms laid down for women in the Hindu tradition have been strengthened and the women are coopted to become part of the campaign against other women and men who are "outsiders" to the Hindu Culture and Order. The manner in which the RSS version of homogenised and monolithic Hindu Culture, destroying the pluralism of our tradition is being prepared with stress on Hindu identity as part of the ideological offering needs to be identified and fought."<sup>100</sup>

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<sup>96</sup> Tanika Sarkar, *The Woman as Communal Subject*, Rashtrasevika Samita, and Ram Janambhoomi Movement, Economic and Political Weekly, Aug. 31, 1991.

<sup>97</sup> Ibid.

<sup>98</sup> All India Democratic Women's Association, Centre for women's Development Studies, Joint Women's Programme, Mahila Daksheta Samiti, National Federation of Indian women, and Young Women's Christian Association of India.

<sup>99</sup> The Fourth World Conference on Women: Action for Equality Development and Peace, 4-15 Sept. 1995, Beijing.

<sup>100</sup> Some Issues in the Struggle for Women's Equality, CWDS, N. Delhi.



There are therefore two areas of concern that the women's movement has had to deal with: firstly, the growing reaffirmation of the old religio-cultural order and the ensuing communal violence in which women and children become the targets and secondly, the communal polarization as a result of the unashamed use of religion for political purposes has its impact on women. Today, a large section of women are reacting on communal lines.<sup>101</sup>

Historian Tanika Sarkar has examined the role of women in communal organization like the RSS. The Hindu Communal grounds well on the other hand, has been restricted largely to urban U.P., to predominantly high caste, middle class milieus. At the same time, the strength of the new phenomenon must not be underestimated. Karsevikas have been mobilised from traditionally the most conservative backgrounds – upper class, middle ranking service centre and trading families. The very limits of the movement may then be taken as signs of strength within a different kind of reading. Nor can we draw false comfort from any illusion that these women are not speaking their own minds, their own words. An interviewer (P.K. Datta, who visited Ayodhya in January) speaking to a bunch of male satyagrahis was, for some time, faced with an array of archaeological cum-historical arguments as well as the standard RSS definition of Bharat as 'pitrabhumi', 'matribhumi', 'punyabhumi' and 'karmabhumi'. Then Chandravati, a woman from Aligarh, excitedly broke into the conversation and introduced a very different note: Yaha aye hai khoon barsane ke liye ... Mandir ka arth mulla ko phansi lag jai ...

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<sup>101</sup> Ibid.

Mulayam aur VP ko phansi lag jai ... (we have come here to shed blood .... the meaning of temple building is that mullas should be hanged, Mulayam and VP should be hanged).<sup>102</sup> Women have participated in Karseva not as mindless individuals but as persons who are committed to the cause of Hindutva. Describing the role of women in the Ram Janambhoomi Movement Teesta Setalwad writes,

'The promise of a Hindu Rashtra, unsullied in its saffron – sprayed glory, has proved an irresistible lure to thousands of women from all corners of the country. This was best illustrated on Dec. 6, 1992 when more than 20,000 kar sevikas chanted in frenzy as their lathi-wielding brethren brought the Babri masjid down.'<sup>103</sup>

Over the past decade or so there have been a marked visibility of groups of women Shiv Sainiks who have successfully risen to the defence of their menfolk found guilty of murder, rioting and possessing illegal arms. This militant band of women have rallied with equal vehemence and anger when Shiv Sena and its Hindu chauvinist and dictatorial bretherens have come under attack.<sup>104</sup> This militancy in women is not limited to women Shiv Sainiks. In Ahmedabad middle class Gujarati women unashamedly shed the veneer of respectability and led attacks on Bata shops in July 1992 under the mistaken impression that the chain was owned by a Muslim.<sup>105</sup>

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<sup>102</sup> Ibid.

<sup>103</sup> Teesta Setalwad, The woman shiv sainik and her Sister Swayamsevika in Tanika Sarkar Urvashi Butalia Ed. women and the Hindu Right, Kali for Women, N. Delhi, pp. 233-244.

<sup>104</sup> Hundreds of Women Shiv Sainiks 'gheroed' and assaulted lawyer M.P. Vashi, for challenging the inflammatory mobilisation by Shiv Sena candidates during election. Cited in Teesta Setalwad, op. cit., p. 233.

<sup>105</sup> Ibid., p. 234.

A joint delegation of four national women's organisations, the All India Democratic Women's Association (AIDWA), the Centre for Women's Development Studies (CWDS), the Mahila Dakshata Samiti (MDS) and the National Federation of Indian Women (NFIW) visited some of the worst riot affected areas in Bhopal, Ahmedabad, and Surat from February 16 to 19, 1943. The delegation met close to 500 riot-hit women of both communities, with a ratio of 4:1 (minority : majority).

The Report of Women's Delegation made several important observations out of which two of these are –

The delegation is in no doubt that whereas there may certainly be unreported instances of sexual attacks on women of the majority community in these cities, the brunt of such atrocities was borne by women of the minority community, the worst of such cases being in Surat. We feel it is important to emphasise this point because we found a concerted and deliberate attempt in all three cities to ignore or whitewash this reality or 'balance' it by saying 'it happened on both sides'.

'Although it is not possible to generalise, the delegation found ample evidence of feeling of solidarity and harmony between women of the two communities and examples of courage in saving each other. However, it would be suicidal for the women's movement to ignore the increasing influence of communal thinking among women which was also apparent in many of the discussions the delegation held.'<sup>106</sup>

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<sup>106</sup> Report of the Women's Delegation "Bhopal, Ahmedabad and Surat AIDWA, CWDS, MDS, NFIW in Tanika Sarkar, Urvashi Butalia, Women and the Hindu Right, Kali for Women, N. Delhi, 1996, pp. 299-328.

Therefore, one of the major challenges which confront the contemporary women's movement is the growing communal identity of women and how women of one community are being used against fellow women from another community for vested political interests.

This challenge becomes all the more difficult in view of the growing popularity of the right wing groups. Teesta Setalvad has provided new insights into the growing appeal of these Hindu organisations.<sup>107</sup> It is her contention that 'at the heart of the growing appeal of these publicly visible arms of the right-wing Hindu organisations was a strategy adopted by them in the early and mid-eighties. Both the BJP's Mahila Morcha (formed in 1980) and the Shiv Sena's Mahila Aghadi that came into existence five years later did so in response to the success of the autonomous feminist movement. These organisations also like the non political or autonomous women's groups launched successful agitations and media campaigns around women's issues like rape, dowry, child molestation and wife battering. Having co-opted the issue that were first raised successfully by the autonomous feminist movement, these outfits soon overtook other women's groups in popularity. Analysing the reasons for this Teesta Setalvad writes,

'Part of the answer lies in the inherent differences of approach between the two (i.e. the non-political feminist movement and the women's wing of the BJP and RSS). The ideology of women's liberation

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<sup>107</sup> Teesta Setalvad, *The Woman Shiv Sainik and Her Sister Swayamsevika* in Tanika Sarkar, Urvashi Butalia, *Women And The Hindu Right*, op. cit., pp. 236-237.

challenges notions of women's status and domination within the family and in other layers of society, the women's wings of left parties (AIDWA, NFIW) especially, challenged feudal and capitalist and even patriarchal family structures. Thereby, pushing women to ask inconvenient questions. The ideology of Hindutva, on the other hand, appears more attractive in the short term: it speaks of inconvenient issues only when they are publicly visible blots like Dowry murder or rape. But, in its very defence of Hindu tradition and authority, the challenges do not appear too painful to handle. The struggle towards Hindutva gives women a respectable space within the community, a struggle that even fulfils temporary political aspirations and leadership qualities.<sup>108</sup>

The BJP and RSS gave public shape to their Mahila wings and paid lip service to burning social issues that exposed conditions for women within the family and within society, adept at organisation, the women's outfits of the RSS and BJP far outstripped others in using these as successful tools for mass mobilisation in the early eighties.

The RSS had organised an all India Hindu Women's Conference in 1997 in Delhi. Not a word was spoken here about the condition of Women in India. In this conference the entire thrust was on the mobilisation of the Hindu woman against the other – those who challenged Hindu culture and tradition and Hindu places of worship. The not so concealed targeting of Muslims forms an important aspect of Nari Shakti or Women's power as understood by the RSS. Women are not only looked upon as the defenders of culture and

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<sup>108</sup> Teesta Setalvad, op. cit., p. 237.

tradition by the RSS but also viewed as the avenger, the devi come to life, to avenge the rape' of the mother country – social sanction to communal activism and the mobilisation of women against the minorities.<sup>109</sup>

Once this mobilisation became successful, however, and the systematic disinformation unleashed by various organs of this ideology began to create bogeys in the public mind, the contemporary women's movement failed to counter this propaganda.<sup>110</sup> Particularly obvious was the failure of the women's movement and others to tackle the Saffron brigade's systematic attempt to 'demonise' the Muslim community.<sup>111</sup>

In Bombay during the mid-eighties, the Shiv Sena (a communal party), which was gaining popularity within the lower middle class, was able to mobilise a large number of women around support activities such as income generation, creches, and mid-day meals for children civic amenities. The movement also appropriated cultural fora of public celebrations of Hindu festivals like Ganesh Utsav and Satya Narayan Pooja which had been popularised by Tilak during the national struggle in pre-independence India. In addition, the sons of the soil theory propagated by Shiv Sena had also managed to carve out a special niche for women. As mothers of these sons of the soil the women were given a special role and responsibility: they had to defend their sons when the latter were arrested, and bring them up to be brave and loyal to the soil.<sup>112</sup>

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<sup>109</sup> RSS: The ideological onslaught on women. AIDWA Publication Series, Dec. 1998, pp. 7-8.

<sup>110</sup> Teesta Setalvad, op. cit., p. 237.

<sup>111</sup> Ibid.

<sup>112</sup> Flavia Agnes Redefining the Agenda of the Women's Movement in Tanika Sarkar and Urvashi Butalia, op. cit.

Through a systematic hate campaign the Shiv Sena was able to whip up communal tensions among their women cadres. The image of the Modern Hindu woman which was constructed while advocating the communal Hindu ideology was not that a traditional subservient and docile domestic being but a new modern Durga, the destroyer of evil, an angry and rebellious woman. This construction of the Modern Hindu woman closely resembled the Indian construction of the new feminist woman.<sup>113</sup>

Through a process of selection Hindu communal forces usurped the external usages popularised by the feminist movement such as protect marches and road blocks (which are contrary to the conservative domestic role of the traditional Hindu woman) while at the same time rejecting the movement's ideological stance. The irony lay in the fact that the communal parties were able to mobilise women far more easily using the image of the modern Durga than the movement which has popularised these forums in the first place.<sup>114</sup>

The leaders of the autonomous or contemporary non-political women's movement were predominantly urban and upper class Hindu. In order to reach out to women from a different class caste and culture and to propagate the new ideology of the strong assertive woman, the movement adopted a populist approach and relied upon mythical symbols of Shakti and Kali to convey the newly constructed feminist ideology. The

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<sup>113</sup> Flavia Agnes *Redefining the Agenda of the Women's Movement* in Tanika Sarkar Urvashi Butalia, op. cit., p. 140. Also Ratna Kapur and Brenda Cossman, *Communalising Gender Engendering Community* in Tanika Sarkar Urvashi Butalia, op. cit.

<sup>114</sup> Ibid.

intention of using the symbols from the dominant religious culture was not to propagate Hindu ideology. But since the movement did not have 'Secularism' as one of its prime objectives, no conscious efforts were made to evolve alternate symbols. Hence the cultural expressions with which women were familiar had surreptitiously crept into the women's movement.<sup>115</sup>

To its dismay the women's movement found that the new found strength, the Shakti of the Modern Durga was not directed against violence within the home and community but was directed externally towards the Muslims – both men and women. In this process the myth that all woman are equal and could be mobilised around a common issue on a common platform lay, shattered. The validity of slogans such as 'Sisterhood is Powerful' or 'Hum Sab Ek Hai' (we are one) was threatened. But what was even more distressing was that women from communal organisations mouthed slogans coined by the women's movement 'Hum Bhart Ki Nari Hai, Phool Nahi Chingari Hai (we are the women of India, not delicate flowers but smouldering embers) while leading demonstrations during the riots or while the Babri Masjid was being torn down.<sup>116</sup>

Women leaders of left political parties such as Ahilya Rangnekar CPI(M), while confronting the fact that women had played a significant role in the riots, admitted that the left parties and women's organisations had failed to counter communalism.<sup>117</sup> It was evident that gender unity could

<sup>115</sup> Flavia Agnes, op. cit., pp. 140-141.

<sup>116</sup> Ibid.

<sup>117</sup> Joshi, Sharmila, 'Women as Messengers of Peace', Independent, 10 March, 1993.



not withstand communal hostility.<sup>118</sup> The section of women who are traditionally the most difficult to mobilise, housewives, had responded to the call of Hindutva and marched under the banner of the Shiv Sena and the Durga Vahini, the women's wing of the VHP. Sadhvi Rithambara and Uma Bharti addressed mammoth public meetings of devout followers and became the living incarnations of Shakti.<sup>119</sup>

In view of the above mentioned facts, the biggest challenge before the women's movement today is communalism. The question which needs to be addressed is whether women's interests will be strengthened by joining hands with communal forces in broader fora, as this could amount to a tacit endorsement of their propaganda. Or should commitment to secularism and minority rights be a pre-condition to forming coalitions for women's rights? These are issues that have not been adequately addressed. Women's issues can no longer be addressed merely within a patriarchal<sup>120</sup> framework along gender lines but have to be re-examined within the newer challenges to democracy, secularism and minority rights.

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<sup>118</sup> Sharma, Kalpana, 'Can Gender Unity Override Communal Hostility?' *The Hindu*, 7 March, 1993.

<sup>119</sup> *Sunday Observer*, 31 January, 1993.

<sup>120</sup> The word patriarchy literally means the rule of the father or the "patriarch", and originally it was used to describe a specific type of "male-dominated family. Now it is used more generally to refer to male domination, to the power relationships by which men dominate women, and to characterise a system whereby women are kept subordinate in a number of ways.

Sylvia Walby in her book, *Theorising Patriarchy* calls it "a system of social structures and practices in which men dominate, oppress and exploit women".

# **CHAPTER 6**

## **CONCLUSION**

## CONCLUSION

The early years of the decade of the seventies were witness to the new stirrings among women with numerous formal and informal groups formed in this period. It was the increasing disillusionment with the constitutional promise of equality for women in India which produced new campaigns and efforts.

Within India a number of events built awareness and outrage among educated Indian women about the states failure to protect and expand women's rights. The passionately angry and compelling report of the Indian committee on the status of women; the heightened press sensitivity to dowry death; rises in prices of household necessities that prompted the organization of the Anti-Price-rise Movement; a Supreme Court decision in the Mathura (rape) case that was blatantly contemptuous of women: all of these transformed women's consciousness and provoked fury.

A feeling of anger and crisis is not enough to create a movement. Resources that allow for organization are also necessary, and they were available within Indian society. Most important were the educated, politically skilled members of women's organization who became more active. Also important was an aspect of Indian political culture that could be brought to the fore: from the time of the nationalist movement, women's participation in agitational politics has been accepted in principle. But concern for women was also generated by an ideological transformation taking place worldwide that directly influenced India. The

feminist impact on the United Nations that resulted in International Women's Year (1975) and the United Nations Decade for Women (1975-85) also had strong reverberations in India.

The women's movement during the decades of the eighties and nineties was distinct from the movement in the seventies. A distinction must be maintained between early feminist analyses of the post independence years, such as that contained in the report on the Committee on the Status of Women in India (CSWI) 'Towards Equality' and later developments, especially since the 1980s, when new women's organisations emerged and older ones revitalised. Towards equality, it must be pointed out, speaks primarily, of forms of discrimination and inequality, and yet does not use patriarchy as a category of analysis. However, the Indian Women's Movement in the 1980s and 1990s becomes distinctly feminist, rather than just anti-patriarchal, namely, not merely fighting injustices or challenging the privileges that men enjoy within their sphere but questioning the very process by which separate spheres are formed. During this phase the activists in the women's movement have also begun to recognise that the position of women is not distinct from caste and class hierarchies. The Indian women's movement has begun to recognise that total social transformation is necessarily a part of the feminist agenda.

It is widely accepted that the issue of violence against women has been the greatest rallying point of the women's movement in the second half of the twentieth century. The issue of violence was successful in

mobilising maximum number of women activists the world over. Violence against women has come to be recognized as a violation of human rights. This has been endorsed at various international conferences, specifically the UN World Conference on Human Rights held in Vienna in 1993, the UN Conference on Population and Development held in Cairo in 1994 and the UN World Conference on Women in Beijing in 1995.

The women movement's campaign against violence was both intense and widespread. Women activists agitated for law reform to deal with atrocities and violence against women. The campaign by women's organizations and those supporting them focussed mainly on reform in the laws relating to dowry and rape. Women's organizations during the 1970s and early 1980s demanded from the state that sweeping amendments be introduced in these laws to check the rising trend of crimes against women. However, the women's movement campaign for law reform to combat violence has not been very encouraging. This becomes very evident if one were to examine the ground realities as well as some of the crime figures. According to the National Crime Bureau (NCRB) on crime trends in India during one year June 1998-1999 the All India Crimes against women rose sharply. Dowry deaths rose by 14.2 percent, sexual harassment by 116.5 percent, cases registered under the Indecent Representation of women Act by 1047 percent and under the Dowry Prohibition Act by 10.8 percent. The all-India figures for crimes against women during 1996 showing the percentage distribution of various crimes is revealing. The largest number of crimes related to torture (30.4

percent), molestation (25 percent), kidnapping (12.9 percent) and rape (12.8 percent). What a travesty our laws are, can be gauged from the fact that while the number of murders because of dowry were 5513, the number of cases registered under the Dowry Prohibition Act were only 2647. Cinema hall throughout the country openly show pornographic films and book shops at every corner sell sleaze, yet the number of cases under the Indecent Representation of Women Act all over the country were only 96.

The proportion of IPC Crimes Committed against women towards IPC crimes during the past three years<sup>1</sup> show marginal increases in the share of crimes against women in the total crimes.

The reasons for this dismal picture lie in the poor enforcement of laws. The dearth of accessible, understandable legal literature on laws relating to rape, maintenance, dowry, and so on, is partially responsible for poor implementation. In many situations, if procedural information is easily available, an activist may be able to assist a woman in need better than a lawyer could. Familiarity with the law is essential whether the aim is legal counselling or agitation for law reform. Manual in simple local language, paralegal training, and wide dissemination of information regarding existing laws would do much towards improving the chances of women receiving justice in courts; family courts<sup>2</sup> have given an illusion that lawyers are not necessary. However, the fact of the situation is that, if

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<sup>1</sup> Table no. Appendix

<sup>2</sup> Family Courts.

men and women are unequal in society, they cannot be equal in court. If a woman has to argue her own case without even knowing the law, and the judges already have an ingrained social bias against women, there is no way women can win. Family courts provide social workers who also do not know the law ..... lawyers may not be necessary but that does not mean that legal awareness is not necessary.

The approach of women activists in the women's movement who assist women in distress by providing legal and psychological counselling has sometimes been haphazard.<sup>3</sup> If the support provided is not comprehensive and sustained, their activities may aggravate the situation rather than improve it. Helping women in distress is a very serious affair. It cannot be done only because one has sometime to spare, it cannot be done if one only has good intentions. It needs something beyond that because one is tampering with social structure which is so ingrained at every level – religious, legal, community, and home. Therefore, what is required is, adequate training in law and whole-hearted commitment, law reform is not adequate enough to deal with violence against women in society.

Further difficulties arise from the fact that though the women's movement has been able to intervene in the legislative system, it has been able to do little at the actual judicial level, in the criminal legal system. One reason for this is that there are very few criminal lawyers who have a feminist perspective; most cases of violence against women

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<sup>3</sup> These were some of the findings in a workshop on 'Family Courts' organised by 'Chetna' a registered women's organisation in Allahabad.

are dealt with by public prosecutors who do it as part of their jobs. The public prosecutor, who argues the case for the woman, a victim of violence, is neither interested in her case nor has any concern for the victim. So, in a way, whatever legislation there is, it has been doomed legislation.

Perhaps because of its many negative experiences in this arena over the past few decades, the women's movement has become rather cynical and skeptical about the role of law in the quest for equality. Disillusionment to the point of abandoning the whole issue would, however, be short sighted. Can the women's movement give up its faith in the rule of law? If law is necessary, then the women's movement will have to put up a fight for the rule of law.

The constitution and constitutional safeguards of the rule of the law are of utmost importance. The emphasis should not be so much on legal reform as on legal measures in various programmes. To date, the attention has been on the statutory and punitive aspects of law i.e., reform in rape and dowry laws with enhanced punishment. There are many other possibilities, however that have not been explored. There could be a new role for law in the women's movement. The recent emphasis on legal literacy is a move in the right direction. There is also a need for greater awareness of criminal procedures and the civil and economic rights of women.

The present criminal justice system puts crimes against women on the same footing as other crimes and fails to take into account the specific and different nature of these crimes. The system does not take into



account the oppressed status of women and their vulnerability to these crimes. It is therefore essential that the laws relating to violence be completely overhauled to make them more comprehensive and closer to the experience of violence faced by women. In fact a committee appointed by the National commission of Women has suggested sweeping changes in the laws relating to sexual assault of women and children. Cases of sexual assault of minors by their guardians are also being reported. Child sexual abuse and incest are issues that will have to be grappled with by the women's movement.

The women's movement in order to combat violence against women will need to insist on procedural changes to ensure that the police investigate the crimes against women. These would have to include punitive measures against the police for not registering the case and carrying out the investigation properly.

Another area which will have to be tackled would be the fairly wide spread gender bias that exists in sections of the police and judiciary. Women's organizations have suggested intensive and extensive gender sensitization of the police and the judiciary to make them aware about the rights of women and the prevailing discrimination against them. The women's movement needs to campaign towards making the criminal justice system more responsive to women.

The women's movement campaign for the right to health and its protests against harmful injectable contraceptives were pioneering.

women activists during their campaign realised that it was coercion combined with lack of information and counselling services that created a situation that is ripe for abuse of human rights. In the past, the women's movement has spoken against policies and programmes that are contrary to the interests and well-being of women. Now there is a need to move out of negative, reactive paradigms and stances to positive ones. Women's organizations must demand low-cost, safe, traditional contraception. The movement recognises the dangers of positing these matters as women's issues which have been increasingly coopted by the establishment. For instance, the demand for choice in contraceptive methods has been used as a justification to promote contraceptive technologies that are known to be harmful, especially to poor women who are undernourished.

The women's movement needs to articulate its demand for safe contraception and universal health care in the strongest possible terms, that is, not to keep positioning itself as being against something but to position itself as being for something, to say what it wants rather than what it does not want.

Even terminology such as 'population control' is loaded. It is because of the concerted efforts made by women activists that instead of population control it is 'Reproductive health' that became a key catchword of the women's decade. Now the agenda has moved forward to a demand for reproductive rights.

At one level this can be seen as the success of the women's movement in influencing the agenda on women's health. On the other, the

Reproductive Health (RH) agenda has limited the issue of women's health to reproduction while evading the structural issues of inequality and discrimination. It is to the credit of the efforts made by the women's movement that a more women-oriented analysis is emerging which attempts to conceptualise the problem of health without reducing it to the specific disability or diseases suffered by women.

The women's movement should demand that men take responsibility for contraception and for the prevention of AIDS. The women health activists must network with other like-minded organizations and build broad-based support for alternative approaches and solution.

The women's movement during the period of this study was confronted with the problem of the Uniform Civil Code. For the women's movement, this challenge has become even more complex, particularly in the context of minority rights versus women's rights in the controversy over the Uniform Civil Code. The support by communal organisation to the Issue of Uniform Civil Code has placed the women's movement in an awkward position. Before this juncture, there had been a broad consensus within the women's movement on the need for gender just laws and a Uniform Civil code. However, the BJP, and other Hindutvavadis, successfully usurped this plank – on the pretext of it being a burning women's question - and set themselves up as its main champions. For the BJP the secular slogan of Uniform Civil Code became an instrument to beat the minorities with the party proclaimed itself as a champion for the rights of Muslim women. It argued that since Hindu laws had been

reformed in the 1950s, the legal status of Hindu women could be taken as the yardstick to initiate improvement in the plight of 'our Muslim sisters'. This put women's activists in a dilemma. the issue was a thorny one: How were the women activists to differentiate their demands as activists and as women from that of the communal parties. It is true that the hardships and suffering were experienced by women of all communities - minority as well as majority – cannot be swept under the carpet or glossed over with the rhetoric of freedom of religion. Nevertheless, the women's movement cannot isolate itself from the political reality confronting the country. In the last several years, as communal divisions have sharply etched more fundamentalist community profiles, the issue of violence stemming from the politics of identity has gripped the women's movement, women groups feel that all personal laws have been anti-women. None of them treat women as 'individuals'. If the Muslim Personal Law discriminates against women so do the Hindu, the Parsi and the Christian Personal Laws.

Besides, women activists have discovered another important reality i.e. no personal law or secular law adequately addresses some of the most crucial issues of concern to women of all communities. In other words the framework for a uniform code is also severely limited at present. Therefore, an umbrella legislation at this stage would therefore amount to building a sky scraper on the foundations of a cottage. It would require complete overhauling of all existing laws if it were to meet the ends of justice. The women's movement has been demanding such an overhauling but its experience even in the sphere of the limited legal

reform it has achieved has not been very encouraging. What is required is the rebuilding of the foundation, the expansion of the concept of social, uniformity, equal rights between men and women as reflected in the legal framework. This is only possible through a step by step approach which will also limit the scope for compromise of women's interests. It means ongoing legislation in identified areas and as the area of intervention increases so also the foundation for a gender just family code will strengthen.

Three steps could be taken as the starting point. First, it would be appropriate if the panchayats and local bodies would start compulsory registration of all marriages, just as births and deaths are registered. This would not interfere in any way in the nature of rituals of the marriage ceremony. Secondly, changes in the laws on property could be started with a new law applicable to all on joint matrimonial property rights. This is an area which has not been dealt within any personal law. Thirdly, a comprehensive law against domestic violence which would protect the physical and mental security and rights of women of all communities within the family.

Therefore, in its quest for gender justice, the women's movement must demand for equal rights, equal laws rather than a Uniform Civil Code. At the same time women and men committed to reform within all communities need to push forward the frontiers of gender justice within their own community.

The newest and perhaps most difficult challenge to the women's movement has come from communalism. In India the growth of revivalist

ideologies and identity politics are undoubtedly linked to opportunistic politics and the failure of progressive organisations to define secularism in unambiguous, positive terms. It can also be argued that the growth of a metropolitan culture and lop-sided westernization through the process of globalization has made many feel alienated from their cultural ethos. This deep alienation and a desire for cultural spaces led to their successful seduction by communal organisations like the Shiv Sena, the Vishva Hindu Parishad, the Bajrang Dal, and the Jamait-i-Islami.

It is evident that these organisations have clearly manipulated women. Although the rhetoric of gender equality is generally used, central to their ideology are notions that clearly devalue women. For instance, biological determinism is stressed to confine women with traditionally prescribed roles. Very insidiously the language of liberation expressed by women's groups has been appropriated but used to reaffirm women's subordination. Their goal is thus not 'Nari Mukti' (women's liberation) which is seen as feminist and western, but nari-shakti (woman power). Their ideology glorifies motherhood and also legitimises women's role as instigators of violence by describing them as 'Shakti' (power) or force that can awaken masculine valour. Paradoxically, here women power is described as Shakti so long as it serves patriarchal values and does not challenge them.

With the intent of widening its support base among women of the middle class, the Bhartiya Janata Party – the main political party espousing the cause of aggressive Hindu nationalism and fundamentalism

– has come out with a deceptively broad-based political agenda for women's welfare.

Therefore, the task confronting the women's movement is that of developing the means by which it can counter communal politics and widen the outreach of the movement. The movement has neglected culture and religion, thus ignoring central aspects of women's lives. The movement did not go deep into evolving an alternative culture for women. On the one hand there is a need to have a clear position on religion and to define secularism more positively, with a stress on ethical values and on the other, to discuss how best the government can network with other progressive organisations. The women's movement will have to find ways of reaching out to lower middle class women. It will have to find forms of communication that can touch them wherever they are. This is precisely the slab of women that has been mobilised by the fundamentalists. The challenge is to evolve a women's culture that is multi-dimensional, that is not compartmentalised into a communal issue or women's issue but represents a more comprehensive approach to our social reality. It is because of this lacunae, that the majority of Indian women do not feel the women's movement in part of their daily lives. What has passed so far as a "women's culture" is essentially a strong Hindu culture. The symbols of the women's movement (Kali, Shakti etc) are derived from the dominant culture where does this leave minority women? There has unfortunately not been much cultural sensitivity in understanding the minority identity within the women's movement.

What has shaken the women's movement more severely than any controversy over laws or policy, has been ground reality. The section of women who are traditionally the most difficult to mobilise, housewives, had responded to the call of Hindutva and marched under the banner of Shiv Sena and the Durga Vahini, the women's wing of the Vishva Hindu Parishad. These fundamentalist forces have been responsible for the largest mobilisation of women. For many in the women's movement, this has been a jolt that has prompted self-examination. Some groups now feel that women's issues can no longer be addressed merely within a patriarchal framework along gender lines but have to be re-examined within the newer challenges to democracy, secularism and minority rights.

The women's movement will have to address itself to the question of women and religion, the movement's attitude towards religion, communalism and fundamentalism as well as the issue of social reform within religious frameworks.

The question of strengthening the women's movement through a more effective system of networking is of great importance. The imperatives for establishing links with other progressive organisations and political parties have become greater today with the advance of regressive politics and ideologies.

The inability to transcend its urban character is reflected in the types of issues that have captured the imagination of the movement. The problem of widening the base of the women's movement has to be



seriously confronted. For this, the movement will need to break out of the urban middle class mould, take up 'survival' problems and join hands with political groups having a large base. For this a common minimum non-negotiable programme could be chalked out.

At the same time, there is a need to bring women's studies more close to the movement so that this can be used to focus on problems faced by women. There is need to develop concepts and methodology which can capture women's real life experiences and at the same time speak in a language which women understand, without under-rating feminist scholarship.

In conclusion, assessing the two decades of the women's movement, the issues and the campaigns that this thesis has examined it may be said that the Indian women's movement has had only very limited success in securing rights and expanding empowerment for women, and yet, despite its apparent failures, it would be inaccurate to deny its accomplishments. For particularly in the struggle for improved legislation concerning violence, the women's groups have had a strong hand in defining the terms of the debate. They have stimulated the process of the public re-examination of ideas about women and violence. Changes in laws have been significant but it is the enforcement of those laws that has been discouraging. Advocates for women's rights confront forces of communalism and, so far, are losing the battle. Hundreds of thousands of women remain mired in terrible poverty and suffer from malnutrition, illiteracy and violence.'

Yet the movement has begun a struggle to change consciousness, so that substantive change may become possible. In addition, for the thousands of women who have participated in the movement it has already added to empowerment and participation more effectively than any other political institution.

There is ample evidence that the rhetoric of the movement is today ingrained into the consciousness of the vast mass of Indian women. Women are today a sizable section of ongoing social movements seeking re-negotiation of their rights on a range of issues. There is no reason to doubt that the protests of the '80s left an impact on the public. The state and government can no longer ignore the constituency of women altogether is enough evidence of this fact.

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# APPENDICES



## APPENDIX 1

### **Draft Manifesto of the Progressive Organization of Women (POW) :**

The concept of the Indian woman as an equal partner of man and as an active participant in all walks of life has never been so clearly shattered as today. We have, on the one hand, our constitution mouthing pious platitudes about the equality of women, and a few women scattered here and there as leaders; and on the other hand, the terrible conditions of the majority of Indian women. To people who talk of Sita and Savitri, we talk of harsh, depressing reality.

Eighty seven out of every hundred women cannot read or write. The horrible practices of prostitution, child marriage, *purdah* and dowry have cut at the very root of the dignity of women. Feudal culture preaches to women seclusion at home and restriction from active participation in public life. Increasingly penetrating foreign culture, on the other hand, has reduced women to nothing more than decorative sex objects. Obscenity in art and literature is rampant. Aggressive male supremacy has led to the sickening practice of Eve-teasing, and one step further, rape. Some of us are not allowed to work for our own living, while others who work on a par with men are not treated on the basis of equal pay for equal work. The position of the housewife is no better. Confined to her home, working from morning to night at backbreaking chores, she has neither independence nor dignity.

These are just a few of the facts of the exploitation and domination of women. All of us know, through our day-to-day experience, what it is to

be a woman - what it is to be regarded as something less than a human being. To achieve the objective of ending this age-old oppression, we must understand why we should support and unite with each other, what are the forces that can unite with us, what are the forces that oppose us, what is the line of action that we should take. What is it, then - the nature of this age-old oppression of women?

### **Nature of Oppression :**

What are the pillars on which the inferior status of women rests?

(a) *Economic dependence* : About 72% of Indian women are not economically independent. Even if they work outside, it is only as a secondary source of income for the family. The centuries-old economic dependence on man is the base for all sexual, cultural and political domination. Even though women work at home, this labour is not paid for - this is private labour power, not social - and this gives rise to the low status of women in society.

(b) *Household drudgery (or the division of labour)* : Women have been, for centuries, isolated in the home, forced to carry out work that is considered unskilled. Because her work day is unending, because there is no one else to look after the children, to wash the clothes, to cook the meals, the woman is isolated from all public activities. Education and work, both are impossible for her, because of the back-breaking chores at home. Excluded from the world of productive labour giving rise to economically visible objects, the woman has become the invisible worker whose work cannot be valued. Thus the woman is practically a slave

(slavery by the definition of modern economists = the power of disposing of the labour power of others).

(c) *Ideology of oppression* : The concept of economic dependence and the division of labour is the economic base. But how do the oppressors justify these? Just as slavery, imperialism and fascism give rise to innumerable theories intended to demonstrate the inferiority of the oppressed peoples and justify genocide, an impressive number of theories have been designed and implemented to keep women 'in their place'.

The sex stereotype is not due to basic biological differences but due to the thousands of years in which the division of labour has prevailed, and men and women were conditioned to this ideology of male supremacy. Participating with others in the production of a car or an aeroplane (social production) is not the same thing as using, in isolation, the same broom in the same few square feet of kitchen (private production).

Confined to the narrow limits of the home, the girl child receives pots, pans, dolls, mirrors etc. as toys. She is taught to imitate her mother, to learn the art of housekeeping, and to prepare for marriage. She is taught that clinging tendencies, meekness, decorativeness, and a pathological fear of independence are feminine, and she is further degraded. Little wonder today that women behave nearly always as they are expected to!

The oppression of women is universal, and the women of all classes face it. Take, for example, the young girls in school and college. Their education is either totally neglected or treated as secondary. Mostly from a middle class background, they are cloistered in the home and classroom. There is hardly any freedom of movement. Cafeterias, cinemas and walks are prohibited unless adequately chaperoned. For them, the day closes by 5.30 p.m. Even though education has opened new horizons for them, even these horizons are limited.

Take another example - working women. Though the Government of India has ratified the ILO Convention concerning 'equal pay for men and women workers for work of equal value' in 1958, it has not been implemented in most industries. Employers purposely use women as a source of cheap labour. Whenever their wages are brought on a par with men workers, they are thrown out of their jobs. Besides which, employers have to incur additional expenditure in the shape of maternity benefits and maintenance of creches, etc. This attitude towards women workers, their employment, their working conditions, and the social discrimination like unequal wages etc. will continue so long as the present social system based on exploitation exists.

### **Reason for Oppression :**

One important and puzzling question is whether women have always been oppressed. If the oppression was not in born in women, how did it arise at all?

History tells us that women were not always oppressed. In the stage of society called primitive communal, men hunted and fished, while women cared from the sprawling households and the handicrafts. At that time women had equal status, because all production was social. While men hunted together, women cooked together. Households were communal, and so were 'families'. When the mode of production slowly changed, when agriculture was discovered and man settled on land, the concept of private property (as distinct from communal property) slowly arose. With this, lands, animals and children came to be owned by men. This in short is the origin of the oppression of women.

### **Struggles of Women :**

After 27 years of independence, we have seen that the promises made by our rulers have been deceptive. Women, like Harijans, came out strongly in the struggle for independence. But just as 'freedom' has brought more discrimination, more torture and killings to the Harijans, it has brought more exploitation and suppression for the women. But this is only one side of the coin. On the other side, we see that women all over India are realizing the true nature of the system, and are breaking the chains of feudal exploitation. In the struggle for land, in the workers' just struggles for better living conditions, women have been in the forefront. More recently, we have seen the women of Gujarat, Bihar and Maharashtra participating actively in the movement against corruption, scarcity of essential commodities and sky-rocketing prices.

We are aware of the forms and nature of oppression of women. Since ages, women have been protesting, both individually and socially. What is the path to emancipation?

One thing we must remember is that any solution for the emancipation of an oppressed strata of society - say, women - must be radical and universal. Radical, because it must hit at the root cause of oppression, and cannot stop at reforms, and universal, because it must genuinely encompass the masses of women.

### **Way to the Emancipation of Women :**

*(a) Economic independence of women :* For women to be economically independent, the precondition is that we should enter into social production. For the majority of women already in social production, the dignity of labour should be restored. But in these days of chronic unemployment, if women join the labour force the result will surely be the swelling of the ranks of the unemployed. Because a few people should gain immense profits, a vast army of unemployed is maintained to keep wages low. The answer to this problem is not that women should remain at home, but that both men and women should fight against exploitation and for socialism. It is clear that only in a socialist society, where the factories and the lands are in the hands of the people who plan production according to their needs, is the emancipation of women possible.

*(b) Removal of household drudgery :* When women come out of their narrow, individualized spheres of labour and take part in social production,

the work at home becomes a double burden. Household work should be shared by the couple, and cheap and efficient restaurants, creches, childcare centers and laundries should be created. But, in our society, restaurants and laundries are built not for the working people, but to satisfy the luxurious tastes of the upper classes. Maternity facilities are not provided in farms and factories, because employers care only for profits. Only in a socialist society, where industry and agriculture serve the toiling people and not private profiteers, where profits go not to fill the coffers of millionaires but to create cheap and efficient services for the people, can the emancipation of women be possible.

*(c) Ideology of equality* : along with the base of economic dependence and private work at home, the superstructure of male dominance should also be destroyed. Women should be encouraged to participate in all walks of life, and their potentialities in all spheres should be developed. Socialism, being the ideology of the oppressed classes, will also create the necessary and genuine climate for the equality of women.

### **The Role of Women :**

Women's struggle for emancipation is thus a very important component of the general struggles of the people for emancipation and towards socialism. Hence, the women have a direct, leading role to play in educating, organizing, and mobilizing women on their own demands, whether they be that of middle class women, college students, or working women. The majority of Indian women are slaves of slaves - they are slaves to the men who themselves are slaves to this exploitative economic

system. It is thus necessary that we women take a direct, leading role in organizing the masses of women in their struggles for a better life and a changed system.

For this, it is of utmost importance that there be a broad-based genuine women's organization. The Progressive Organization of women (POW) must and will fulfil this. Hence the POW shall :

1. Create a broad consciousness for upholding the dignity of women and fight for their emancipation.
2. Uphold and propagate scientific socialism.
3. Resolutely fight against feudal economy and culture that mainly oppresses women.
4. Support and unite with the toiling masses in their struggles against foreign domination and exploitation.
5. Support and unite with the toiling masses in their struggle against corruption and black marketeering and against the monopoly houses.
6. Support and unite with the students' demands for a scientific and production-oriented education system.
7. Resolutely fight against all forms of injustice, social oppression and repression.

As immediate demands, the POW :

1. Demands legislation against (a) prostitution, (b) prostitution, (b) obscene art depicting women as degrading sex objects.
2. Demands the enforcement of the legislation against (a) dowry and (b) child marriage.



3. Demands that daughters shall have an equal share of both earned and inherited property.
4. Demands implementation of the laws for equal pay, for equal work, maternity and creche facilities.
5. Demands better facilities for working women and students in the form of better and more hostels, cheap restaurants, etc.
6. \_Small fight against corruption, black market hoarding, and for regular supply of essential commodities.

### **Conclusion :**

Let us not forget that we are all responsible citizens of India. So long as the wretchedness of a prostitute's life exists, so long as marriage remains a chattel action, so long as children go to bed hungry, so long as an illiterate people grope for knowledge, so long as India remains in the grip of foreign domination, so long as poverty, hunger and famine stalk the land, so long as the dignity of women remains mere platform rhetoric, we women of India cannot afford to remain quiet. We women cannot afford to remain in our traditional passivity and feminine inactivity. Our duty is to rise, protest and struggle.

we proclaim solidarity with all women!

We proclaim solidarity with all oppressed classes!

Progressive Organization of Women  
(Hyderabad-Seconderabad)  
1974

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**APPENDIX-II**

AIR 1979 SUPREME COURT 185

= 1978 CRI. L.J. 1864

( From: Bombay)\*

JASWANT SINGH, P.S. KAILASAM AND A.D. KOSHAL, JJ.

Tukaram and another

Appellants

Vs

The State of Maharashtra.

Respondent

Criminal Appeal No. 64 of 1977, D/-, 15-9-1978.

Penal code (45 of 1860), S. 375 Thirdly –Sexual intercourse – Consent

-Circumstances negating existing of “fear” and story of “passive submission”- Accused, held, entitled to be acquitted. Criminal Appeal No. 193 of 1974, D/- 13-10-1976 (Bom.- At Nagpur), Reversed.

The fear which clause Thirdly of S.375 speaks of is negated by the circumstances that the girl is said to have been taken away by the police constable right from amongst her near and dear ones at a point of time when they were all leaving the police station together and were crossing the

entrance gate to emerge out of it. Her failure to appeal to her companions who were no others than her brother, her aunt and her lover, and her conduct in meekly following the constable and allowing her to have his way with her to the extent of satisfying his lust in full, makes it clear that the consent in question was not a consent which could be brushed aside as “passive submission” Criminal Appeal No. 193 of 1974, D/- 13-10-1976 (Bom.- At Nagpur), Reversed. ( Para 5)

Anno : AIR Comm. I.P.C. (2nd Edn.), Ss. 375 & 376 N.4

Mr. M.N. Phadka, Sr.Advocater (M/s S.V. Deshpande, V.M. Phade and N.M. Ghatate, Advocate with him), for Appellants ; M/s. H.R.Khanna and M.N. Shroff, for Respondent.

**KOSHAL, J. :-** This appeal by special leave is directed against the judgment dated the 12th Oct. 1976 of the High Court of Judicature at Bombay (Nagpur Bench) revising a judgment of acquittal of the two appellants of an offence under S. 376 read with S.34 of the Indian Penal Code recorded by the Session Judge, Chandrapur, on the 1st of June 1974, and convicting Tukaram, appellant No.1 of an offence under S. 354 of the Code and the second appellant named Ganpat of one under S. 376 thereof.

The sentences imposed by the High Court on the two appellants are rigorous imprisonment for a year and 5 years respectively.

2. Briefly stated, the prosecution case is this. Appellant No.1 who is a head constable of police, was attached to the Desai Gang police station in March 1972 and so was appellant No.2 who is a police constable.

Mathura ( P.W. 1) is a girl who is said to have been raped. Her parents died when she was a child and she is living with her brother, Gama ( P.W. 3) Both of them worked as labourers to earn a living. Mathura ( P.W. 1) used to go to the house of Nushi (P.W.2)for work and during the course of her visits to that house, came into contact with Ashok, who was the sister's son of Nushi (P.W.2) and was residing with the latter. The contact developed into an intimacy so that Ashok and Mathura (P.W.1) decided to become husband and wife.

On the 26th of March 1972, Gama (P.W.3) lodged report Ex. P-8 at police station Desai Gunj alleging that Mathura ( P.W. 1) had been kidnapped by Nushi (P.W.2) her husband Laxman and the said Ashok. The report was recorded by head constable Baburao (P.W.8) at whose instance all the three persons complained against as well as Mathura ( P.W. 1) were

brought to the police station at about 9 p.m. and who recorded the statements of the two lovers. By then it was about 10.30 p.m. and Baburao ( P.W.8) told them to go after giving them a direction that Gama (P.W.3) shall bring a copy of the entry regarding the birth of Mathura ( P.W. 1) recorded in the relevant register and himself left for his house as he had yet to take his evening meal. At that time the two appellants were present at the police station.

After Baburao (P.W.8) had gone away, Mathura ( P.W. 1) Nushi (P.W.2), Gama (P.W.3) and Ashok started leaving the police station. The appellants, however,asked Mathura ( P.W. 1) to wait at the police station and told her companions to move out. The direction was complied with. Immediately thereafter Ganpat appellant took Mathura ( P.W. 1) into a latrine situation at the rear of the main building, loosened her under-wear, lit a torch and stared at her private parts. He then dragged her to a chhapri which serves the main building as its back verandha. In the chhapri he felled her on the ground and raped her in spite of protests and stiff resistance on her parts. He departed after satisfying his lust and then Tukaram appellant, who was seated on a cot nearby, came to the place where Mathura ( P.W. 1)

was and fondled her private parts. He also wanted to rape her but was unable to do so for the reason that he was in a highly intoxicated condition.

Nushi (P.W.2) Gama (P.W.3) and Ashok, who had been waiting outside the police station for Mathura ( P.W. 1) grew suspicious when they found the lights of the police station being turned off and its entrance door being closed from within. They went to the rear of the police station in order to find out what the matter was. No light was visible inside and when Nushi ( P.W.2) shouted for Mathura ( P.W. 1) there was no response. The noise attracted a crowd and some time later Tukaram appellant emerged from the rear of the police station and on an enquiry from Nushi (P.W.2) stated that the girl had already left. He himself went out and shortly afterwards Mathura ( P.W. 1) also emerged from the rear of the police station and informed Nushi (P.W.2) and Gama ( P.W.3) that has compelled her to undress herself and had raped her.

Nushi (P.W.2) took Mathura (P.W.1) to Dr Khune (P.W.9) and the former told him that the girl was subjected to rape by a police constable and a Head Constable in police station Desai Gunj. The doctor told them to go to the police station and lodge a report there.

A few persons brought Head Constable Baburao (P.W.8) from his house. He found that the crowd had grown restive and was threatening to beat Ganpat appellant and also to burn down the police station. Baburao (P.W.8) however, was successful in persuading the crowd to disperse and thereafter took down the statement (Ex.5) of Mathura (P.W.1) which was registered as the first information report.

Mathura (P.W.1) was examined by Dr. Kamal Shastrakar at 8 pm on the 27<sup>th</sup> March 1972. The girl had no injury on her person. Her hymen revealed old raptures. The vagina admitted to fingers easily. There was no matting of the pubic hair. The age of the girl was estimated by the doctor to be between 14 and 16 years. A sample of the pubic hair and two vaginal-smear slides were sent by the doctor in a sealed packet to the chemical examiner who found no traces of semen therein. Presence of semen was however detected on the girl's clothes and the pyjama which was taken off the person of Ganpat appellant.

3. The learned Session Judge found that there was no satisfactory evidence to prove that Mathura was below 16 years of age on the date of the occurrence. He further held that she was "a shocking liar" whose testimony

“is riddled with false hood and improbabilities”. But he observed that “the farthest one can go into believing her and the corroborative circumstances, would be the conclusion that while at the police station, she had sexual intercourse and that, in all probability, this was with accused No.2”. He added however that there was a world of difference between “sexual intercourse” and “rape” and that rape had not been proved inspite of the fact that the defence version which was a bare denial of the allegations of rape, could not be accepted at its face value. He further observed: “finding Nushi angry and knowing that Nushi would suspect something fishy, she (Mathura) could not have very well admitted that of her own free will, she had surrendered her body to a police constable. The crowd included her lover Ashok, and she had to sound virtuous before him. This is why-this is a possibility- she might have invented the story of having been confined at the police station and raped by accused No.2. Mathura is habituated to sexual intercourse as is clear from the testimony of Dr. Shastrakar, and accused No.2 is no novice. He speaks of nightly discharges. This may be untrue, but there is no reason to exclude the possibility of his having stained his Pyjama with semen while having sexual intercourse with persons other than



Mathura. The seminal stains on Mathura can be similarly accounted for. She was after all living with Ashok and very much in Love with him -----  
-----” and then concluded that the prosecution had failed to prove its case against the appellants.

4. The High Court took note of the various findings arrived at by the learned Sessions Judge and then itself proceeded to sift the evidence bearing in mind the principle that a reversal of the acquittal would not be justified if the view taken by the trial court was reasonably possible, even though the High Court was inclined to take a different view of the facts. It agreed with the learned Sessions Judge in respect of his findings with regard to the age of Mathura (P.W.1) but then held that the deposition of the girl that Ganpat appellant had had sexual intercourse with her was reliable, supported as it was by circumstantial evidence, especially that of the presence of stains of semen on the clothes of the girl and Ganpat appellant. The fact that semen was found neither on the pubic hair nor on the vaginal-smears taken from her person, was considered to be of no consequence by reason of the circumstance that the girl was examined by the lady doctor about 20 hours after the event, and the probability that she had taken a bath in the meantime.

The High Court had proceeded to observe that although the learned Sessions Judge was right in saying that there was a world of difference between sexual intercourse and rape, he erred in appreciating the difference between consent and "passive submission". In coming to the conclusion that the sexual intercourse in question was forcible and amounted to rape, the High Court remarked:

" Besides the circumstances that emerge from the oral evidence on the record, we have to see in what situation Mathura was at the material time. Both the accused were strangers to her. It is not the case of the defence that Mathura knew both these accused or any of them since before the time of occurrence. It is therefore, indeed, highly improbable that Mathura on her part would make any overtures or invite the accused to satisfy her sexual desire. Indeed it is also not probable that a girl who was involved in a complaint filed by her brother would make such overtures or advances. The initiative must, therefore, have come from the accused and if such an initiative comes from the accused, indeed she could not have resisted the same on account of the situation in which she had found herself especially on account of a complaint filed by her brother against her which was

pending enquiry at the very police station. If these circumstances are taken into consideration it would be clear that the initiative for sexual intercourse must have come from the accused or any of them and she had to submit without any resistance.....Mere passive or helpless surrender of the body and its resignation to the other's lust induced by threats or fear cannot be equated with the desire or will, nor can furnish an answer by the mere fact that the sexual act was not in opposition to such desire or volition..... On the other hand, taking advantage of the fact that Mathura was involved in a complaint filed by her brother and that she was alone at the police station at the dead hour of night, it is more probable that the initiative for satisfying the sexual desire must have proceeded from the accused, and that victim Mathura must not have been a willing party to the act of the sexual intercourse. Her subsequent conduct in making statement immediately not only to her relatives but also to the members of the crowd leave no manner of doubt that she was subjected to forcible sexual intercourse."

In relation to Tukaram appellant, the High Court did not believe that he had made any attempt to rape the girl but took her word for granted in so far as he was alleged to have fondled her private parts after the act of sexual intercourse by Ganpat appellant.

It was in these premises that the High Court convicted and sentenced the two appellants as aforesaid.

5. The main contention which has been raised before us on behalf of the appellants is that no direct evidence being available about the nature of the consent of the girl to the alleged act of sexual intercourse, the same had to be inferred from the available circumstances and that from those circumstances it could not be deduced that the girl had been subjected to or was under any fear or compulsion such as would justify an inference of any "passive submission", and this contention appears to us to be well-based. As pointed out earlier, no marks of injury were found on the person of the girl after the incident and their absence goes a long way to indicate that the alleged intercourse was a peaceful affair, and that the story of a stiff resistance having been put up by the girl is all false. It is further clear that the averments on the part of the girl that she had been shouting loudly for help

are also a tissue of lies. On these two points the learned Sessions Judge and the High Court also hold the same view. In coming to the conclusion that the consent of the girl was a case of “passive submission”, the High Court mainly relied on the circumstance that at the relevant time the girl was in the police station where she would feel helpless in the presence of the two appellants who were persons in authority and whose advances she could hardly repel all by herself and inferred that her submission to the act of sexual intercourse must be regarded as the result of fear and, therefore, as no consent in the eye of law. This reasoning suffers from two errors. In the first place, it loses sight of the fact which was admitted by the girl in cross-examination and which has been thus described in the impugned judgment :

“She asserted that after Baburao had recorded her statement before the occurrence, she and Gama had started to leave the police station and were passing through the front door. While she was so passing, Ganpat caught her. She stated that she knew the name of accused No. 2 as Ganpat from Head Constable Baburao while giving her report Ext. 5. She stated that immediately after her hand was caught by Ganpat she cried out. However, she was not allowed to raise the cry when she was being taken to the latrine

but was prevented from doing so. Even so, she had cried out loudly. She stated that she had raised alarm even when the underwear was loosened at the latrine and also when Ganpat was looking at her private parts with the aid of a torch. She stated that the underwear was not loosened by her."

Now the cries and the alarm are, of course, a concoction on her part but then there is no reason to disbelieve her assertion that after Baburao (P. W. 8) had recorded her statement, she and Gama had started leaving the police station and were passing through the entrance door when Ganpta appellant caught hold of her and took her away to the latrine. And if that be so, it would be preposterous to suggest that although she was in the company of her brother (and also perhaps of Ashok and her aunt Nushi) and had practically left the police station, she would be so over-awed by the fact of the appellants being persons in authority on the circumstance that she was just emerging from a police station that she would make no attempt at all to resist. On the other hand, her natural impulse would be to shake off the hand that caught her and cry out for help even before she noticed who her molester was. Her failure to appeal to her companions who were no other than her brother, her aunt and her lover, and her conduct in meekly

following Ganpat appellant and allowing him to have his way with her to the extent of satisfying his lust in full, makes us feel that the consent in question was not a consent which could be brushed aside as “passive submission”.

Secondly, it has to be borne in mind that the onus is always on the prosecution to prove affirmatively each ingredient of the offence it seeks to establish and that such onus never shifts. It was, therefore, incumbent on it to make out that all the ingredients of Section 375 of the I.P.C. were present in the case of the sexual intercourse attributed to Ganpat appellant. That section lays down :

375. “A man is said to commit “rape” who except in the case hereinafter excepted, has sexual intercourse with a woman under circumstances falling under any of the five following descriptions :

First.—Against her will.

Secondly.—Without her consent.

Thirdly.—With her consent, when her consent has been obtained by putting her in fear of death, or of hurt.

Fourthly.—With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

Fifthly.—With or without her consent, when she is under sixteen years of age.

Explanation.—Penetration is sufficient to constitute the sexual intercourse necessary to the offence of rape.

Exception.—Sexual intercourse by a man with his own wife, the wife not being under fifteen years of age, is not rape.’

The section itself states in clauses Thirdly and Fourthly as to when a consent would not be a consent within the meaning of clause Secondly. For the proposition that the requisite consent was lacking in the present case, reliance on behalf of the State can be placed only on clause Thirdly so that it would have to be shown that the girl had been put in fear of death or hurt and that that was the reason for her consent. To this aspect of the matter the High Court was perhaps alive when it talked of “passive submission” but then in holding that the circumstances available in the present case make out a case of fear on the part of the girl, it did not give a finding that such fear



was shown to be that of death or hurt, and in the absence of such a finding, the alleged fear would not vitiate the consent. Further, for circumstantial evidence to be used in order to prove an ingredient of an offence, it has to be such that it leads to no reasonable inference other than that of guilt. We have already pointed out that the fear which clause. Thirdly of Section 375 speaks of is negated by the circumstance that the girl is said to have been taken away by Ganpat right from amongst her near and dear ones at a point of time when they were all leaving the police station together and were crossing the entrance gate to emerge out of it. The circumstantial evidence available, therefore, is not only capable of being construed in a way different from that adopted by the High Court but actually derogates in no uncertain measures from the inference drawn by it.

6. In view of what we have said above, we conclude that the sexual intercourse in question is not proved to amount to rape and that no offence is brought home to Ganpat appellant.

7. The only allegation found by the High Court to have been brought home to Tukaram appellant is that he fondled the private parts of the girl after Ganpat had left her. The High Court itself has taken note of the fact that in the first

information report (Ex. 5) the girl had made against Tukaram serious allegations on which she had gone back at the trial and the acts covered by which she attributed in her deposition to Ganpat instead. Those allegations were that Tukaram who had caught hold of her in the first instance, had taken her to the latrine in the near of the main building, had it a torch and had stared at her private parts in the torch-light. Now if the girl could alter her position in regard to these serious allegations at will, where is the assurance that her word is truthful in relation to what she now says about Tukaram ? The High Court appears to have been influenced by the fact that Tukaram was present at the police station when the incident took place and that he left it after the incident. This circumstance, in our opinion, is not inculpatory and is capable of more explanations than one. We do not, therefore, propose to take the girl at her word in relation to Tukaram appellant and hold that the charge remains wholly unproved against him.

8. In the result, the appeal succeeds and is accepted. The judgment of the High Court is reversed and the conviction recorded against as well as the sentences imposed upon the appellants by it are set aside.

Appeal allowed.

## APPENDIX-III

## COMPARISON BETWEEN THE NUTRITIONAL STATUS OF MALE AND FEMALE CHILDREN

	NORMAL NUTRITION		70-80% OF THE EXPECTED WEIGHT FOR AGE		LESS THAN 70% OF THE EXPECTED WEIGHT FOR AGE	
	M	F	M	F	M	F
Privileged	86%	10%	10%	11%	4%	13%
Under-privileged	43%	26%	43%	24%	14%	50%

Source : 7<sup>th</sup> Annual Report Community Health Department, CMC, Ludhiana, 1978.

APPENDIX-IV  
SEXWISE COMPARISON OF FOOD INTAKE OF CHILDREN IN THE AGE GROUP 3-4 AND 7-9 YEARS

FOOD ITEMS	AGE IN YEARS					
	3-4 YEARS		RDX+	7-9 YEARS		RDA
	MALE	FEMALE		MALE	FEMALE	
	(Weight in grams)			(Weight in grams)		
Cereals	118	90	175	252	240	250
Pulses	22	18	55	49	25	70
Green leafy Vegetables	3	0	62	0	3	75
Roots and tubers	15	13	40	42		50
Fruits	30	17	50	17	6	50
Milk	188	173	225	122	10	250
Sugar and Jaggery	13	16	22.5	30	12	30
Fats and Oil	5	2	30	23.3	8	50

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Source : Rajmal Devdas and Godavari Kamalanathan

NA Women's First decade", Presented in the Conference on Women's KESI, UNICEF, New Delhi April 1985.

**APPENDIX-V**  
**AVERAGE PER CAPITA INTAKE OF CALORIE FROM MEALS PREPARED IN HOUSEHOLD KITCHEN BY AGE AND SEX**  
**AND PER CAPITA MONTHLY EXPENDITURE CLASSES.**

Age	Sex*	Per capita expenditure(Rs)					
		20 or	20-40	40-60	60-100	above 100	all
(0)	(1)	(2)	(3)	(4)	(5)	(6)	(7)
Less than six months	M	173	248	222	281	441	254
	F	223	246	245	279	323	255
Six months to Less than one year	M	313	343	387	613	617	428
	F	375	401	451	506	740	455
1 year to less than 2 years	M	451	529	601	710	871	597
	F	407	479	580	620	771	565
2 years to less than 3 years	M	613	715	855	852	993	790
	F	638	723	772	885	937	776
3 years to less than 5 years	M	813	883	936	1150	1193	968
	F	764	834	986	1091	1280	952
12-16 years	M	1046	1258	1498	1584	1950	1446
	F	1017	1166	1350	1498	1748	1346
17-21 years	M	1250	1406	1623	1669	2025	1615
	F	1078	1273	1445	1643	1831	1498
22-56 years	M	1317	1453	1684	1761	2018	1696
	F	1121	1351	1476	1657	1794	1549
57 years and above	M	1043	1261	1529	1745	2020	1611
	F	1018	1195	1344	1464	1633	1355

\* M- Male, F- female

Source : Maitra, Tarses, Devadas, Rajamal and Kamalanathan, Godawari(1985)

"A womens first decade" presented at UNICEF during the "Women's MEC consultation".

# APPENDIX-VI INTAKE OF NUTRIENTS IN DIFFERENT DEMOGRAPHIC GROUPS

	NO LAND	LESS THAN 5 ACRES	5-10 ACRES	MORE THAN 10 ACRES	LABOURERS	CULTIVATORS	OTHE
Calories(per consumer unit per day)							
Kerala	1824	1904	2232	1589	1718	2040	2015
Tamil Nadu	2108	2320	2671	2718	2012	2548	2321
Karnataka	2312	2576	2860	3099	2338	2901	2526
Andhra Pradesh	2274	2480	2824	2974	2358	2805	2328
Maharashtra	2006	2178	2251	2517	1948	2413	2150
Gujarat	1999	2142	2234	2444	1941	2219	2097
Madhya Pradesh	1977	1939	2108	2403	1905	2221	2059
West Bengal	1866	2346	3055	3052	1806	2543	2414
Uttar Pradesh	1991	2116	2227	2377	2000	2192	2043
Protein(gram per consumer unit per day)							
Kerala	44.2	44.3	57.4	34.6	37.7	49.3	49.0
Tamil Nadu	52.3	56.6	66.7	67.2	49.6	62.4	57.7
Karnataka	63.3	65.3	76.3	86.5	63.2	77.0	67.0
Andhra Pradesh	53.8	59.7	72.3	74.3	55.7	70.4	55.9
Maharashtra	58.8	62.5	65.7	73.8	57.5	70.3	62.3
Gujarat	57.2	60.1	64.5	70.6	56.9	65.0	58.0
Madhya Pradesh	58.0	59.9	67.1	74.5	57.3	69.5	61.5
West Bengal	48.7	59.2	76.3	75.2	46.7	53.3	61.3
Uttar Pradesh	64.2	66.2	73.9	77.7	64.4	69.9	65.1

Source: Annual report(1979) of National Nutrition Monitoring Bureau, National Institute of Nutrition, Hyderabad. Reported by :  
Rajaram Deshpande, Economic and political weekly, Vol. XVIII No. 28, July 9, 1983.

## APPENDIX-VII

## PERCENTAGE OF DEATHS BY CAUSES RELATED TO CHILD BIRTH AND PREGNANCY (MATERNAL), 1976 TO 1983

Specific causes	1976	1977	1978	1979	1980	1981	1982	1983
Abortion	11.6	8.2	11.0	11.7	12.5	13.7	10.1	10.7
Toxaemia	10.4	11.2	21.2	16.1	12.4	8.0	12.5	12.1
Anaemia	22.1	15.9	14.6	15.0	15.8	17.7	24.4	18.9
Bleeding of pregnancy								
And puerperium	17.2	20.6	18.2	20.0	15.8	23.4	26.2	23.8
Malposition of child								
Leading to death of mother	8.6	9.4	9.5	10.5	13.4	9.2	7.2	8.3
Puerperal sepsis	13.5	18.8	12.4	11.7	12.4	13.1	8.3	11.6
Not classifiable	16.6	15.9	13.1	15.0	17.7	14.9	11.3	14.6
Total	100	100	100	100	100	100	100	100
Sample no. of deaths	163	170	137	180	209	175	168	206
Percent of total deaths	1.1	1.0	1.0	1.1	1.2	1.0	1.0	1.2

Source: Survey of causes of Deaths (Rural) 1980, 1983

-- a Report R.G.India

**APPENDIX-VIII.1**  
**AGE-SEX SPECIFIC DEATH RATES IN INDIA : 1982**

AGE GROUPS	RURAL			URBAN			COMBINED		
	M	F	P	M	F	P	M	F	P
0-4	42.2	45.7	43.9	21.2	20.5	20.9	31.9	40.5	39.1
5-9	3.4	4.3	3.8	1.4	1.8	1.5	3.0	3.7	3.3
10-14	1.9	1.9	1.9	0.8	1.0	0.9	1.6	1.7	1.7
15-19	2.1	2.7	2.4	1.1	1.6	1.3	1.8	2.4	2.1
20-24	2.5	3.8	3.1	1.6	2.4	2.0	2.3	3.5	2.9
25-29	3.0	3.5	3.2	2.2	2.2	2.2	2.8	3.2	3.0
30-34	3.7	3.8	3.8	2.4	2.2	2.3	3.4	3.5	3.4
35-39	4.8	4.5	4.6	2.8	2.5	2.6	4.5	4.0	4.2
40-44	6.7	5.5	6.1	5.0	4.0	4.5	6.5	5.2	5.7
45-49	9.7	7.6	8.7	8.0	4.6	6.5	9.3	7.0	8.2
50-54	14.7	12.1	13.5	12.9	8.4	10.9	14.4	11.3	12.9
55-59	21.7	16.5	19.2	16.8	11.5	14.4	20.7	15.5	18.3
60-64	34.6	27.6	31.2	28.2	21.7	25.1	33.4	26.4	30.0
65-69	49.4	39.6	44.6	42.7	36.3	39.5	48.5	38.9	43.6
70-	98.1	90.2	94.2	83.4	71.2	77.2	95.5	86.1	90.8
All ages	13.1	13.2	13.1	7.7	7.1	7.4	11.9	11.9	11.9

Note:

M-Male

F-Female

P-Person

Source : Sample registration system 1982, Registrar General of India, Reported in "Health Information Of India" (1986), Central Bureau of Health Intelligence, Directorate General Of Health Service, Nirman Bhavan, New Delhi.



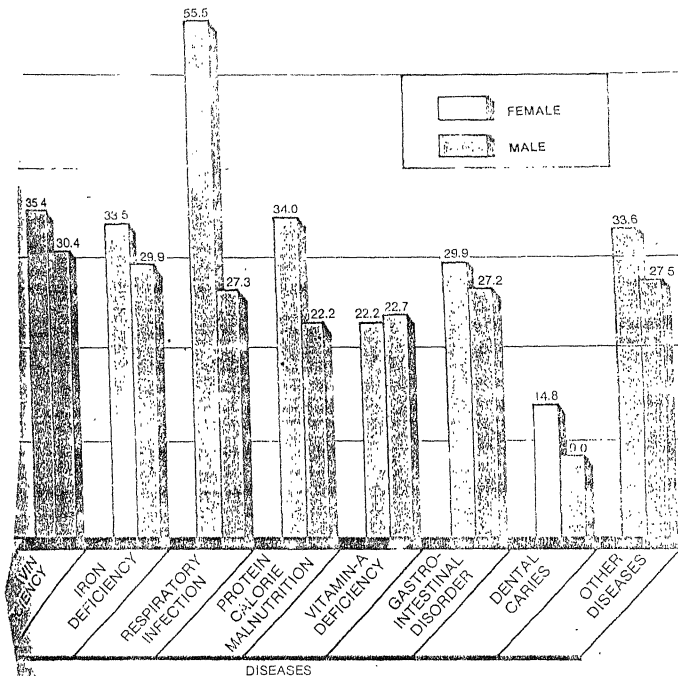
**APPENDIX-VIII.2**  
**SEX RATIO IN SELECT STATES AND UNION TERRITORIES IN INDIA-1971 AND 1981**  
**(FEMALES PER 1000 MALES)**

SL NO.	STATES AND UNION TERRITORY	1971**	1981*
1.	ANDHRA PRADESH	977	975
2.	BIHAR	954	946
3.	MANIPUR	980	971
4.	NAGALAND	871	863
5.	ORISSA	988	981
6.	TAMIL NADU	978	977
7.	DADAR AND NAGAR HAVELI	1007	974
8.	GOA DAMAN AND DIU	989	981
9.	LAKSHADEWEEP	978	975
10.	MIZORAM	946	919
11.	PONDICHERY	989	985
	INDIA	930	933

Source : \* Registrar General of India, Reported in 'Health Statistics of India(1981), Central Bureau Of Health Intelligence, Directorate General of Health Services, Ministry of Health and Family Welfare, Govt of India, New Delhi.

\*\* Registrar General of India, Reported in 'Pocket Book of Health Statistics of India (1971), Central Bureau of Health Intelligence, Directorate General of Health Services, Ministry of Health and Family Welfare, Govt. of India, New Delhi.

## SEXWISE MORBIDITY PATTERNS AMONG CHILDREN — 1985



"The Girl Child in India -- Data Sheet on Health"  
 National Media Centre and UNICEF (1985)

**APPENDIX-VIII.4** 298  
**SEX RATIO IN STATES AND UNION TERRITORIES OF INDIA**

	INDIA/STATE UNION TERRITORY	TOTAL	RURAL	URBAN
	INDIA* @	933	951	878
1.	ANDHRA PRADESH	975	984	948
2.	ASSAM	901	917	768
3.	BIHAR	946	963	832
4.	GUJARAT	942	959	905
5.	HARYANA	870	876	849
6.	HIMACHAL PRADESH	973	989	795
7.	JAMMU AND KASHMIR@	892	897	875
8.	KARNATAKA	963	978	926
9.	KERALA	1032	1034	1021
10.	MADHYA PRADESH	941	956	884
11.	MAHARASHTRA	937	987	850
12.	MANIPUR	971	971	969
13.	MEGHALAYA	954	965	904
14.	NAGALAND	863	899	688
15.	ORISSA	981	999	859
16.	PUNJAB	879	884	865
17.	RAJASTHAN	919	950	877
18.	SIKKIM	835	864	697
19.	TAMIL NADU	977	987	956
20.	TRIPURA	946	945	957
21.	UTTAR PRADESH	885	893	846
22.	WEST BANGAL	911	947	819
	UNION TERRITORY			
23.	ANDAMAN & NICOBAR	760	774	720
24.	ARUNACHAL PRADESH	862	881	629
25.	CHANDIGARH	769	668	775
26.	DADAR AND NAGAR HAVELI	974	981	884
27.	DELHI	808	810	808
28.	GOA, DAMAN AND DIU	981	1013	919
29.	LAKSHADWEEP	975	986	963
30.	MIZORAM	919	928	893
31.	PONDICHERRY	985	977	992

- Includes projected figures of Assam where census could not be held due to disturbed conditions prevailing at the time of 1981 census

@ The population figures exclude population of area under unlawful occupation of Pakistan and China where census could not be taken.

Source : Registrar General of India, Reported in 'Health Statistics of India(1981), Central Bureau Of Health Intelligence, Directorate General of Health Services, Ministry of Health and Family Welfare. Govt of India. New Delhi.

**APPENDIX-IX****RESOLUTIONS**

Passed at the All-India Anti-Hindu-Code Convention held at Jaipur on the

16<sup>th</sup>, 17<sup>th</sup> & 18<sup>th</sup> December 1948

1. Resolved that this All-India Anti-Hindu-Code Convention held at Jaipur enters its emphatic protest against the Hindu Code Bill for the following among other reasons and requests that it should be dropped :

- (a) That it cuts at the root of the Vedic and Shastric origin of the Hindu Law and will seriously and inevitably undermine the foundations of the Hindu religion, Hindu culture and Hindu Social structure.
- (b) That the Bill introduces sweeping, fundamental and revolutionary changes in the Hindu Law against the solid opposition of almost the whole Hindu Society.
- (c) That the provisions relating to marriage, divorce, inheritance etc. are opposed to salutary and long established conceptions of Hindu Law.
- (d) That the introduction of women's share in the inheritance will lead to fractionization, and the disruption of the Hindu family

system which has throughout the ages acted as a cooperative institution for the preservation of family ties, family property and family stability amongst the Hindus.

- (e) That this is a major bill, highly controversial and of far reaching effect on the Hindu Society and should not be passed without full consideration by the vast body of Hindus who will be profoundly affected by it.
- (f) That the present Constituent Assembly was elected only for a specific object, namely to frame a constitution for India and it may at the most consider and pass Legislation of routine or urgent and non controversial nature.
- (g) That the present Assembly, not being elected by adult franchise and for other constitutional reasons, should not pass a legislation of such serious magnitude and character as pointed out by the President of the Indian National Congress and President of the Constituent Assembly.
- (h) That the Bill should be withdrawn for the time and provisions of the same be put before the electorate at the next election and it can, if at all, be taken up for consideration thereafter if sanctioned by the electorate.

(i) The Convention hereby declares its considered view that :

- (a) If in spite of the protest of the entire Hindu Community, the sponsors of this Bill persist in pushing the Code Bill through the Legislature, the members of the Assembly are requested in a body as well as individually to oppose the same.
- (b) If the members of the Legislature are unable to oppose the Bill, the electorate may be given a chance in the election to express their views.
- (c) The President of the Constituent Assembly has already pointed out that the bill has not been circulated by the Assembly for public opinion. Even evidence was not taken from the residents of the States as the Hindu Code was not then to apply to the States. Now if it will be applicable to the whole of India including the States, the Public Opinion is to be invited from the States and India and evidence is also to be sought in the States.
- (d) The bill contemplates a flagrant and down-right interference with Hindu religion in violation of the fundamental principles of a salutary constitution.

III. This Convention recommends to the Constituent Assembly that there should be perfect and inviolable guarantees in the new

constitution for religious and cultural protection and the legislature should not interfere in personal law.

IV. That a chain of meeting should be held throughout the country to oppose the Hindu Code Bill and arrangements should be made to send telegrams and letters and signatures should be obtained against the Bill. All the resolutions etc. should be communicated to the Government.

V. Certain films are being exhibited in the country touching the social and religious matters which wound the feelings of the Hindus; so, this convention requests the Government to ban such films.

Daryaganj

Delhi

RAMAVATAR PANDEY

Secretary

All-India Anti-Hindu Code Committee.

## **APPENDIX - X**

### **RECOMMENDATIONS BY VIMOCHANA AND LAWYERS COLLECTIVE (1988) :**

These recommendations were evolved at a workshop organized by Vimachana, a counselling and support group based in Bangalore along with *Lawyers Collective*, in May 1988 at Bangalore. Protection of economic rights of women within marriage is a major concern of this draft. The draft proposes joint ownership of property acquired after marriage and grants women the right to reside in the matrimonial home. The husband is restrained from selling the matrimonial home or relinquishing the tenancy of the house without the consent of the wife.

Departing from the outdated 'fault' theory of divorce where one spouse has to prove a matrimonial fault (adultery, cruelty, desertion, insanity etc.) against the other, the 'breakdown' theory is based on incompatibility between the spouses and is borrowed from the principles of English matrimonial statutes of recent times. With this, the archaic provision of restitution of conjugal rights is automatically abolished. To grant additional protection to women, it is proposed that a divorce demanded by the husband on the ground of irretrievable breakdown of marriage, should be granted only after he makes adequate economic provision for the wife. The draft stipulates that if the wife is in possession of the matrimonial home, her right of residence should not be extinguished upon divorce.



Since enforcement of maintenance orders is one of the major hurdles faced by women, the draft suggests that the husband should be required to make a voluntary disclosure of his assets and income immediately after a petition for divorce is filed by either of the spouses. Thereafter, he must deposit three months' maintenance for the wife and children. The amount must be calculated by dividing the income in equal shares between the husband, wife and minor children. The draft also stipulates that matrimonial courts should have the power to award lump sum maintenance, property settlements and salary attachments. Criminal and civil remedies to prevent violence against women including ouster injunctions are also proposed to provide protection to women within marriage.

The concept of father as the natural guardian of the child is sought to be abolished. The draft specifically protects the mother's rights to custody by stipulating that custody should be given to the parent who has taken the responsibility of looking after the child in the past. The draft also suggests that the lack of earning capacity of the mother or the fact that she has no dwelling should not disentitle her to the custody of the children and further, factors like alcoholism, violence towards the mother or the children should be considered while determining the best interest of the child in custody petitions.

The recommendations provide for compulsory registration of marriages but grant rights to women in informal relationships. Further, it is clarified that for the purpose of conviction for bigamy, cohabitation should

be deemed as marriage. It recommends abolition of the offence of adultery under S.497 IPC.

The contradiction between providing for compulsory registration of marriages, granting recognition to informal marriages and providing for the rights of cohabittees, abolishing the punishment for adultery and broadening the base of conviction for bigamy (from formal marriages to informal relationships) has not been addressed in the recommendations. This seems to be its major drawback. If the rights of cohabittees are on par with the rights of spouses then registration serves no purpose at all and there would be no compulsion to register a marriage in a society where marriages are viewed more as social functions than legal contracts. Also if marriages and informal cohabitations are granted similar weightage and are deemed as offences then the whole premise upon which conviction for bigamy is based collapses. Here the existing law makes a clear distinction between solemn marriages and illegitimate and informal alliances where the ceremony of solemnization and permanency of the relationship is of greatest relevance. The widening of the scope would render adultery an offence rather than bigamy. But in the same stroke, it is recommended that adultery ought not to be deemed as an offence. So there is an ambiguity about whether the focus of the reform is curbing sexual immorality by a penal provision or protecting women's economic rights through widening the scope of maintenance to include women in informal alliances.

The recommendations introduce the remedy of irretrievable breakdown of marriage. This was proposed by the Law Commission in its 71st Report. But due to opposition from various women's organizations, the issue was abandoned. The opposition from the women's organizations was based on the fact that the remedy may not suit the Indian cultural ethos and women will be worse affected by it. It will provide an avenue for husbands, after years of marriage, to opt out on flimsy grounds and leave the wife and children in the lurch. While the opposition is valid, it is premised on an abstract theoretic basis since at the practical level, the remedy has already made a back door entry into the matrimonial statutes. Firstly, the ground of mental cruelty is used by the parties almost on the same footing as irretrievable breakdown of marriage. Further by the 1976 amendment, several new grounds of divorce have been introduced in the Hindu Marriage Act and the Special Marriage Act which amount to irretrievable breakdown of marriage. So the opposition does not have a legal basis. The proposed recommendations are an improvement on the current legal position as well as the Law Commission recommendations. As far as the husbands are concerned, the remedy is linked to economic settlements in favour of wives. But if the litigations for maintenance are an indication, the husbands will find myriad ways to wriggle out of their economic responsibilities.

**Recommendations by the All India Democratic Women's Association (AIDWA) (1995) :**

The AIDWA is affiliated to CPI(M) and has been active in the campaign for women's rights in the post-independence period. Its

campaign against the enactment of the Muslim Women's Bill is particularly significant. While initially the group endorsed the demand for a UCC, in its more recent convention, it has opposed this demand and has suggested alternate recommendations.

While concern for strengthening women's rights is the governing principle, the focus of the recommendations is upon the strategies of reform. At its national convention held at Delhi on 9-10 December 1995 titled Equal Rights, Equal Laws, AIDWA has proposed a step by step approach to bring in reform. The convention rejected implementation of a comprehensive code, whether compulsory or optional, and instead has advocated legislation on specific issues and reform within existing personal laws as dual strategies of achieving the goal of gender justice.

An umbrella legislation would require the complete overhauling of all existing laws. This may pose obstacles in the path of immediate reform. Before implementing a comprehensive code, the foundation of equality between men and women would have to be laid. Secular legislation in specific areas of crucial concern will be an important step in this direction. The three specific areas of legislative reform proposed by the convention are: (i) right to matrimonial property; (ii) protection against domestic violence; and (iii) marriage registration facilities.

A legislation on joint matrimonial property would grant recognition to women's contribution to the household by way of unpaid labour and reduce the incidents of destitution which are common to women of all communities. A Domestic Violence Act could provide for both civil and

criminal remedies. The demand for a law on registration of marriages clarified that there should be no interference in the nature of rituals and ceremonies of marriages. A decentralized machinery should be provided for registering marriages at the village levels and local panchayats could be granted the power of registration. Such registration could be of great help to women by providing documentary proof of a valid marriage in the event of dispute.

The convention acknowledged that the task of reform is not easy and it cannot be achieved without a sustained and broad based political struggle, campaigns and awareness programmes. Although there have been discussions within smaller groups in recent times, lack of widespread movements for changes within personal laws have been the major constraints. The convention resolved that campaigns within communities are important strategies for reform in personal laws.

Both the drafts discussed in this section are based on ground realities of helping women in distress situations and hence are aimed at seeking practical solutions to the problem despite some minor inconsistencies. If translated into specific acts, they would provide some relief to the economic problems faced by women.

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